

Request for City Council Action

Date: July 28, 2015

Agenda Section: Consent No. 5	Originating Department: Public Works- Engineering/Legal			
Item: A Resolution Authorizing the City Manager to Execute a Financial Assistance Agreement with the IEPA for \$750,000 in Clean Lakes 319(h) Funding and a Resolution Authorizing the City Manager to Execute an Engineering Agreement with HMG Engineers, Inc. No. 5.8				
Background and Summary: On July 15, 2014, the Carbondale City Council authorized the City Manager to submit a grant application to the Illinois Environmental Protection Agency (IEPA) for \$750,000 in Clean Lakes 319(h) Program Funding for Erosion and Sediment Control work on Cedar Lake. On July 7, 2015 the City Engineering Division received notice of award of \$750,000 in Clean Lakes 319(h) funding from the IEPA along with the Financial Assistance Agreement which must be executed and returned to the IEPA prior to August 1, 2015. Previously the City of Carbondale received \$185,000 in funding from the United States Forest Service to assist with erosion and sedimentation control work on the south end of Cedar Lake. These funds will be used to fund a portion of a larger erosion and sedimentation control project (CIP #WS1503) on Cedar Lake. In order to fund the larger project the City sought additional funding from the Federal Clean Lakes program, which is administered by the IEPA. These funds will be used to aid in mitigating erosion and sedimentation concerns that were identified in the 2011 Watershed Needs Evaluation that was performed by HDR Engineering for the City of Carbondale. The City previously hired HMG Engineers, Inc. of Murphysboro, Illinois, to put the Clean Lakes 319(h) grant application together; the grant application included a project budget of \$1,257,880, of which \$750,000 (59.6%) was proposed to be funded by the Clean Lakes 319(h) program funds. The maximum amount of funding allowed by the Clean Lakes 319(h) Funding is 60.0%. HMG Engineers, formerly HDR Inc., of Murphysboro, Illinois has extensive experience in erosion and sedimentation control work and has previously performed the Phase I Diagnostic/Feasibility Study for Cedar Lake, Phase II Shoreline and Gully Erosion Control Work on Cedar Lake, and assisted with the successful grant applications for funding both past and this current project. Staff recommends that HMG Engineers, Inc. again be retained to perform engineering design work due to their familiarity and specialty with these types of projects and Cedar Lake. Sufficient funds are currently included in the FY 2016 Five Year CIP to begin engineering design of this project. Once design is complete formal bids will be solicited for the work. Construction of this project is currently planned to occur during the summer of 2016 (FY2017).				
Recommended Actions: The City Council is requested to approve the Resolution which authorizes the City Manager to execute a Financial Assistance Agreement with IEPA for \$750,000 in Clean Lakes 319(h) funding. The City Council is also requested to approve the Resolution authorizing the City Manager to execute an Engineering Agreement with HMG Engineers, Inc. for Engineering Services related to erosion and sedimentation control work on Cedar Lake in an amount not to exceed \$160,000.				
Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
Council Action: Motion by _____ 2nd by _____ to _____				

RESOLUTION NO. 2015-R-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FINANCIAL ASSISTANCE AGREEMENT WITH THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a) of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public, health, safety, morals and welfare; and

WHEREAS, the City of Carbondale maintains Cedar Lake for the use of and by the population of the City of Carbondale; and

WHEREAS, the City submitted an application to the Illinois Environmental Protection Agency to seek funding under Section 319 of the Clean Water Act for Cedar Lake which was approved by the Illinois Environmental Protection Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE, ILLINOIS, AS FOLLOWS:

SECTION 1. That the City Council of the City of Carbondale hereby authorizes the City Manager to execute a Financial Assistance Agreement with the Illinois Environmental Protection Agency, Bureau of Water, attached hereto as Exhibit A.

SECTION 2. That the City Manager is hereby authorized to execute and the City Clerk is hereby authorized to attest the agreement herein authorized above and referred to herein.

SECTION 3. That the City Manager of the City of Carbondale is hereby authorized to and shall take any and all reasonable, necessary, and proper action to carry out the intent and purposes of this Resolution.

SECTION 4. That it is the intention of the City Council of the City of Carbondale that this Resolution and every provision thereof shall be considered separable, and the invalidity of any section, clause, or provision of this Resolution shall not affect the validity of any other portion of this Resolution.

SECTION 5. That this Resolution be spread at length upon the minute records of the City Council of the City of Carbondale, Illinois.

This Resolution is adopted at a regular meeting of the City Council of the City of Carbondale, Illinois on July 28, 2015.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

RESOLUTION NO. 2015-R-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENGINEERING AGREEMENT WITH HMG ENGINEERS, INC., FOR ENGINEERING SERVICES RELATED TO EROSION AND SEDIMENT CONTROL WORK ON CEDAR LAKE.

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a) of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public, health, safety, morals and welfare; and

WHEREAS, the City of Carbondale maintains Cedar Lake for the use of and by the population of the City of Carbondale; and

WHEREAS, the funding of the Illinois Clean Lakes 319(h) Program Cedar Lake has been approved by the Illinois Environmental Protection Agency; and

WHEREAS, HMG Engineers, Inc. has been solicited to perform this Engineering work due to their familiarity and specialty with erosion and sediment control work and Cedar Lake; and

WHEREAS, the contractual services requested from HMG Engineers, Inc. are services which are professional in nature, thereby creating an exception to the formal bidding process in accordance with Section 1-6-13(E)(2); and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE, ILLINOIS, AS FOLLOWS:

SECTION ONE. That the City Council of the City of Carbondale hereby authorizes the City Manager to execute an Engineering Agreement with HMG Engineers, Inc., attached hereto as Exhibit A.

SECTION 2. That the City Manager and the City of Carbondale, Illinois is hereby authorized to and shall take any and all reasonable, necessary and proper action to carry out the intent and purposes of this Resolution.

SECTION 3. That this Resolution be spread at length upon the minute records of the City Council of the City of Carbondale, Illinois.

This Resolution is adopted at a regular meeting of the City Council of the City of Carbondale, Illinois on July 28, 2015.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

Exhibit "A"

Financial Assistance Agreement

State of Illinois
Illinois Environmental Protection Agency
Bureau of Water

AGREEMENT PERIOD:

The period of performance covered by this Agreement shall be from Date of Execution through July 31, 2017. No services will be paid which are performed prior to or subsequent to this performance period.

Assistance Amount \$750,000.00 CFDA Number 66.460

Agreement Type 319 Agreement Number 3191507

Recipient City of Carbondale

Address 200 South Illinois Avenue Telephone (618) 457-3271
Carbondale, Illinois 62902 FAX (618) 457-3243

Project Description/Scope of Work

CEDAR LAKE BMP IMPLEMENTATION – GULLY & SHORELINE STABILIZATION

Under this Agreement, the Recipient shall complete the following tasks.

BEST MANAGEMENT PRACTICES

1. Best Management Practice Design - The Recipient shall submit design specifications (Design) for the stabilization of 12,200 feet of eroding shoreline on Cedar Lake and 7,100 feet of eroding gullies in the Cedar Lake watershed. The Design shall provide information on the BMP's costs, advantage and disadvantages, location, design, maintenance, installation and construction, and materials used. The Design shall also include an estimate of pollutant removal efficiency calculated using the Illinois EPA's Estimating Pollutant Load Reductions for Nonpoint Source Pollution Control BMPs workbook. The Design shall meet the requirements of the current Natural Resources Conservation Service (NRCS) Technical Guide and Engineering Field Manual and/or Illinois Urban Manual. The Design must be certified by a registered professional engineer or NRCS staff unless the Recipient obtains a waiver of this certification requirement from the Illinois EPA. Two (2) copies of the draft Design and "BMP Application Forms" shall be completed and submitted by the Recipient to the Illinois EPA by July 31, 2016. Two (2) paper copies and one (1) electronic copy of the final Design and "BMP Application Forms" shall be completed and submitted by the Recipient to the Illinois EPA by August 31, 2016.
2. Permits - The Recipient shall ensure that all permits are secured prior to the implementation of the Design developed under Item 1 of this Agreement.
3. Best Management Practice Implementation - The Recipient shall implement the Design developed and approved in accordance with Item 1 of this Agreement. Design implementation

will be completed by June 30, 2017. Photographs (including slides, negatives and/or digital files) documenting Design implementation shall be completed and submitted by the Recipient to the Illinois EPA by July 31, 2017.

4. Operation and Maintenance Plans - The Recipient shall develop Operation and Maintenance Plans (O & M Plan) for the BMPs implemented under this Agreement to ensure their long-term viability (at least ten years). The O & M Plans shall identify regular inspection needs and appropriate management activities such as sediment and debris removal, replacement of vegetation and hardware, chemical treatment, etc. The O & M Plans shall identify both coordinating (i.e., local governments) and participating (i.e., citizen groups, landowners) parties to carry out inspection and management needs and the financial resources necessary for implementation of the O & M Plan. A draft of all O & M Plans shall be completed and submitted by the Recipient to the Illinois EPA by July 31, 2016. The final O & M Plans shall all be completed and submitted by the Recipient to the Illinois EPA by August 31, 2016.

EDUCATION AND OUTREACH

5. The Recipient shall develop an Education Work Strategy (EWS) which identifies the specific educational and outreach activities to be carried out within the Cedar Lake watershed to promote technical assistance for nonpoint source pollution control BMP implementation and educate the public on the various forms of nonpoint source pollution, their impacts on the environment, methods for reducing nonpoint source pollution, the importance of water quality protection and watershed principles. The EWS shall include a proposed schedule, description, and budget for all educational outreach activities to be completed under this Agreement. Two (2) paper copies of the draft EWS shall complete and submitted by the Recipient to the Illinois EPA by October 31, 2015. Two (2) paper copies and one (1) electronic copy of the final EWS shall be completed and submitted by the Recipient to the Illinois EPA by November 30, 2015.
6. The Recipient shall implement the education and outreach activities consistent with the EWS developed in accordance with Item 5 of this Agreement. Draft and final versions of all educational materials developed under this Agreement and in accordance with the EWS shall be completed and submitted to the Illinois EPA for approval before distribution. The Recipient shall submit a final agenda for meetings, tours, and other special events to the Illinois EPA at least one month prior to the execution of said event. All education and outreach activities shall be implemented by November 1, 2016.

PROJECT EVALUATION AND REPORT

7. The Recipient shall prepare a project report which explains the project goals, and documents the steps taken and results achieved, including but not limited to:
 - the type, units, and locations of all BMPs implemented under this Agreement. The Recipient shall include the final BMP layout, location, drawings, construction specifications, material list, photos of the completed BMPs, and perceived water quality and secondary benefits.
 - an evaluation of the project's success, including improvements in water quality, habitat, local economic and/or environmental conditions, and riparian or wetland conditions.

The Recipient shall submit a draft of this report to the Illinois EPA by June 30, 2017, for review and comment. The Recipient shall submit one electronic copy and at least 5 paper copies of the approved final project report to Illinois EPA by July 31, 2017.

OTHER DIRECTED ACTIVITIES

8. The Recipient shall submit written progress reports by the 15th of January, April, July, and October occurring during the Agreement Period, including a summary of project activities and photographs (including slides, negatives and/or digital files) of project implementation.
9. The Illinois EPA will reimburse the Recipient no more frequently than monthly, upon satisfactory progress and submission of an invoice and written documentation of costs incurred, and the quarterly progress reports described in Section 8, for all eligible expenses incurred consistent with the Estimated Allowable Project Costs section of this Agreement.
10. Upon request by the Illinois EPA, the Recipient will relinquish all equipment, as defined by the Illinois' State Accounting Management System, Section 11.5.3 Page 23, acquired under this Agreement to the Bureau of Water—Nonpoint Source Unit upon conclusion of this Agreement.
11. The Recipient shall be available for coordination and progress briefings. The dates and locations of these briefings will be specified by the Illinois EPA in consultation with the Recipient.
12. The Recipient and the Illinois EPA retain the right to cite, quote, circulate, and reprint all documents and other materials produced under this Agreement. The Recipient will include in any publications for external general circulation (including brochures, newsletters, and presentation materials) the following phrase: "Funding for this project provided, in part, by the Illinois Environmental Protection Agency through Section 319 of the Clean Water Act."
13. All products produced and all work performed by the Recipient under this Agreement shall be subject to review and approval by the Illinois EPA to determine eligibility and acceptability in meeting the terms and intent of this Agreement.
14. Notwithstanding the Conditions/Certifications, portions of the Recipient's work may be performed by subcontractors, outside associates, or consultants. The Recipient will submit documentation of all subagreements to the Illinois EPA prior to the execution of the subagreement.

Project Schedule

<u>Description</u>	<u>Completion Date</u>
<u>BEST MANAGEMENT PRACTICES</u>	
1. Draft Design	July 31, 2016
Final Design	August 31, 2016
3. Complete Installation of BMPs	June 30, 2017
Submit Photographic Documentation	July 31, 2017
4. Draft O & M Plan	July 31, 2016
Final O & M Plan	August 31, 2016
<u>EDUCATION & OUTREACH</u>	
5. Draft Education Work Strategy	October 31, 2015
Final Education Work Strategy	November 30, 2015
6. Implement Education Work Strategy	November 1, 2016
<u>PROJECT EVALUATION & REPORT</u>	
7. Draft Report	June 30, 2017
Final Report	July 31, 2017

OTHER DIRECTED ACTIVITIES

8. Progress Reports

Quarterly as stipulated

Estimated Allowable Project Costs
--

<u>Project Cost Summary</u>	<u>Totals</u>
1. Direct Labor	27,880.00
Administration	11,480.00
Professional/Technical	10,440.00
Secretarial	1,160.00
Project Management	4,800.00
2. Other Direct Costs	3,000.00
Travel	800.00
Information/Education	2,200.00
3. Subcontracts	1,227,000.00
Shoreline Stabilization	854,000.00
Gully Stabilization	213,000.00
Engineering	160,000.00
TOTAL	<u>\$ 1,257,880.00</u>

Assistance Amount at	<u>59.62%</u>	<u>\$ 750,000.00</u>
Recipient Share at	<u>40.38%</u>	<u>\$ 507,880.00</u>

Offer and Acceptance

This Financial Assistance Agreement is subject to all applicable State and Federal statutory provisions, State and Federal Grant Regulations, the organization certifications and grant conditions attached hereto, and certifications provided as part of the Recipients Application for Assistance.

For the State of Illinois Environmental Protection Agency:

The Director (herein called the "Director") of the Illinois Environmental Protection Agency, in accordance with the authority given in the Environmental Protection Act, and in appropriation by the General Assembly made pursuant thereby, hereby offers financial assistance to the Recipient, up to and not exceeding the specified amount, for the support of the efforts contained in the Project Description.

Director _____ **Date** _____
 (Lisa Bonnett – Director)

By _____

Printed Name Carol Radwine

Title Chief Financial Officer

On behalf of the Recipient:

I the undersigned, being duly authorized to take such actions, do hereby accept this offer and agree to all terms and conditions including the Conditions/Certifications attached hereto. I certify under oath that all information in this Agreement is true and correct to the best of my knowledge, information, and belief; that the funds shall be used only for the purposes described in this Agreement; and that the award of grant funds is conditioned upon such certification.

Recipient _____

Signature _____

By _____

Printed Name _____

Title _____

Date _____

For the State of Illinois Environmental Protection Agency:

Therefore, the State of Illinois executes this Agreement this ___ day of _____, 2015.

Federal Funding Accountability and Transparency Act Required Reporting

DUNS Number: _____

Recipient Name: _____

Name of Project: _____

Requirement to report five most highly compensated officers: When all three of the following conditions are met in the previous fiscal year, you must report the five most highly compensated officers of the entity.

- 1) The recipient received 80 percent or more of its annual gross revenues in Federal awards, and
- 2) The recipient received \$25,000,000 or more in annual gross revenue from Federal awards, and
- 3) The public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USCS § 6104].

Check either box A or B below and complete the requested information.

A) I certify that, in the preceding fiscal year, _____, _____
Period of Time Recipient Name

- 1 **DID NOT** receive 80 percent or more of its annual gross revenues in Federal awards, or
- 2 **DID NOT** receive \$25,000,000 or more in annual gross revenue from Federal awards, or
- 3 The public **DOES** have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USCS § 6104].

And, is therefore, not required to report the names and compensation of the five most highly compensated officers.

B) The five most highly compensated officers of _____ are:
Recipient Name

	<u>Name</u>	<u>Compensation Amount*</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

*Compensation includes: (1) Salary and bonus. (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R. (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees. (4) Change in present value of defined benefit and actuarial pension plans. (5) Above-market earnings on deferred compensation that is not tax-qualified. (6) Other compensation. For example: severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

Signature Date

Title

ORGANIZATION CERTIFICATIONS AND GRANT CONDITIONS
For CLEAN WATER ACT SECTION 319(h) FINANCIAL ASSISTANCE AGREEMENTS
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Section 319(h) grant applicants must certify that the following organization certifications and grant conditions, dated June 15, 2015, are acceptable and true. A summary of the organization certifications and grant conditions can be found on pages 3 through 16 of this document.

Upon review of this document, complete page 2 and return entire document to:

Illinois Environmental Protection Agency
Bureau of Water, Watershed Management Section
P.O. Box 19276
Springfield, Illinois 62794-9276

List of Organization Certifications:

1. Capability
2. Recipient Share
3. Responsibility of the Recipient
4. Findings Confidential
5. Subcontracts
6. Statutory Certifications
7. Contracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms
8. More Favorable Terms Clause
9. Violating Facilities
10. Fraud and Other Unlawful or Corrupt Practices
11. Educational Loans & Debt Delinquency
12. Sarbanes-Oxley Act of 2002/Illinois Securities Law of 1953
13. Bid Rigging and Bid Rotating
14. Suspension and Debarment
15. Bribery
16. Drug Free Workplace Certification
17. Privity of Agreement
18. Covenant Against Contingent Fees
19. Compliance with Government-Wide Guidance on Lobbying Restrictions
20. Single Audit Act
21. Audit and Access to Records
22. Indemnity
23. Recycling and Waste Prevention
24. Trafficking Victim Protection Act of 2000
25. Management Fees
26. Hotel-Motel Fire Safety

List of Grant Conditions:

- 27. Supersession
- 28. Right of Illinois EPA to Products of the Agreement
- 29. Appropriation Contingency (Multiyear)
- 30. Availability of Appropriations; Sufficiency of Funds
- 31. Liability of the Illinois EPA
- 32. Disputes
- 33. Amendments
- 34. Termination
- 35. Payments

I, the undersigned, being duly authorized to take such actions, have: (1) reviewed the Organization Certifications and Grant Conditions for Clean Water Act Section 319(h) Financial Assistance Agreements; (2) retained a copy of the Illinois Environmental Protection Agency's ("Illinois EPA") Organization Certifications and Grant Conditions; and (3) certify that items 1 through 35 of the Illinois EPA's Organization Certifications and Grant Conditions are acceptable and true.

Signature of Authorized Representative

Printed Name

Title

Signed by (if other than Authorized Representative)

Printed Name

Title

Date

This Agency is authorized to require this information under 415 ILCS 5/4(k). Disclosure of this information is required. Failure to do so may prevent this form from being processed and could result in your application being denied.

ORGANIZATION CERTIFICATIONS AND GRANT CONDITIONS
For CLEAN WATER ACT SECTION 319(h) FINANCIAL ASSISTANCE AGREEMENTS
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

The term “Agreement” means the Financial Assistance Agreement between the Illinois Environmental Protection Agency (“Illinois EPA”) and the Recipient.

The term “Agreement Period” means the period of performance covered by the Agreement. The start and end date of the Agreement Period is expressly set out in the Agreement.

The term “consultant services” means any services provided under a financial assistance agreement to the State by any consultant qualified by education, experience, and technical ability to advise and assist in solving specific management and programmatic problems involving the organization, planning, direction, control, and operation of Illinois EPA.

The term “Recipient” means the individual or entity identified as the applicant in a Section 319(h) Financial Assistance Agreement Application for funding consideration. The term “Recipient” also refers to an individual or entity that has entered into a Financial Assistance Agreement with the Illinois EPA.

The term “subcontractor” is used interchangeably with the term “consultant” for purposes of the Agreement and these organizational certifications and grant conditions.

Recipients can access:

- the Illinois Compiled Statutes (“ILCS”) at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>;
- the United States Code (“USC”) at <http://www.gpoaccess.gov/uscode/>; and
- the Code of Federal Regulations (“CFR”) at <http://www.gpoaccess.gov/CFR/>.

CERTIFICATIONS:

1. Capability

The Recipient certifies that it:

- a) has the authority to accomplish the planned scope of work in the Agreement project area;
- b) has the ability to accomplish the planned scope of work pursuant to deadlines to be scheduled as part of the Agreement; and
- c) can obtain financial resources (i.e., eligible match) and has the necessary legal and institutional capability to perform the project activities throughout the Agreement Period.

2. Recipient Share

The Recipient certifies that federal funding makes up no part of the Recipient's share of the total project cost and that the Recipient Share is used exclusively for this project. Recipient further certifies that the Recipient Share for this project is not being used to match or financially qualify for any other federal grant.

3. Responsibility of the Recipient

The Recipient certifies that it is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all services furnished by the Recipient under the Agreement. The Recipient must, without additional financial assistance, correct or revise any errors or deficiencies in its services.

The Recipient certifies that it will perform such services as necessary to accomplish the objectives of the Agreement, in accordance with all the terms of the Agreement.

Illinois EPA's financial obligations to the Recipient are limited to the amount of funding identified as "Assistance Amount" in the Agreement. If the Recipient incurs costs in anticipation of receiving additional funds from Illinois EPA, Recipient does so at its own risk.

4. Findings Confidential

The Recipient certifies that any reports, information, documents, etc., given to, prepared or assembled by the Recipient under the Agreement that the Illinois EPA requests be kept confidential, as required by the Illinois Environmental Protection Act (415 ILCS 5/7 and 415 ILCS 5/7.1), shall not be made available to any individual or organization without prior written approval of the Illinois EPA.

5. Subcontracts

The Recipient must submit a draft of any contract for consultant services to the Illinois EPA for approval. The Recipient may not use any consultant services in connection with the services covered by the Agreement unless the Recipient is specifically authorized to do so, in writing, by the Illinois EPA.

Any Recipient who enters into a financial assistance agreement for consultant services with a State agency must specify in the Agreement whether the Recipient will utilize the services of a subcontractor(s). The Agreement shall include the anticipated amount of money that will be paid to the subcontractor(s).

The Recipient must establish all subcontracts in a writing that includes these organization certifications and grant conditions. If consultant services are authorized in writing by the Illinois EPA, the Recipient must submit to the Illinois EPA an executed copy of each agreement that the Recipient enters into with subcontractor(s) within seven (7) days after the date on which the Recipient enters into the agreement with the subcontractor(s). Along with

the agreement required by this paragraph, the Recipient must certify, in writing, that any subcontracts are necessary, reasonable, and allocable.

If at any time, subsequent to entering into the Agreement, the Recipient desires to utilize the services of a subcontractor in a manner inconsistent with the stipulations of the Agreement's Estimated Allowable Project Costs section, the Recipient must file a revised Project Cost Summary form with the Illinois EPA in addition to the other information required by this Subcontracts Section. The revised Project Cost Summary form must include a Subcontractor line item and the anticipated amount of money to be used under that line item. The Recipient must obtain Illinois EPA approval of the revised Project Cost Summary form before any changes indicated in the revised Project Cost Summary will take effect.

The Recipient certifies that it will maintain responsibility for ensuring successful completion of the Agreement's scope of work. This responsibility cannot be delegated or transferred to a subcontractor. The Recipient may not assign or transfer either the Agreement or any interest resulting from the Agreement without prior written authorization from the Illinois EPA. In addition, the Recipient certifies that it is responsible for selecting its subcontractors and, if applicable, for conducting subaward competitions.

If the Recipient uses any consultant services in connection with the services covered by the Agreement, the Recipient must ensure that all subcontractors abide by these certifications and conditions.

6. Statutory Certifications

The Recipient certifies that it will comply with:

- a) all environmental laws and regulations;
- b) the Illinois Human Rights Act (775 ILCS 5 (2006)), and its implementing rules and regulations;
- c) the American's with Disabilities Act (42 USCA 12101 (2008));
- d) Titles VI and VII of the Civil Rights Act of 1964 (42 USCA 2000 (2008));
- e) Section 504 of the Rehabilitation Act of 1973;
- f) Title IX of the Education Amendments of 1972;
- g) the Age Discrimination Act of 1975;
- h) the Department of Labor regulations (41 CFR Part 60);
- i) the federal Davis-Bacon Act (40 USCA 3141 (2008)) wage determinations;
- j) the Architectural, Engineering, and Land Survey Qualifications Based Selection Act (30 ILCS 535 (2006));
- k) the Steel Products Procurement Act (30 ILCS 565 (2006));
- l) the Energy Policy and Conservation Act (42 USCA 6321 (2008)); and
- m) the State Prohibition of Goods from Forced Labor Act (30 ILCS 583 (2006)).

If the Recipient violates any law, regulation, or order, the Recipient may be declared ineligible for future financial assistance agreements or subcontracts with the State of Illinois or any of the State of Illinois' political subdivisions or municipal corporations, the Agreement may be terminated under the Termination Section of this Agreement, and such

other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

7. Contracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Recipient must comply with the requirements of U.S. EPA's program for utilization of small, minority and women's business enterprises, contained at 40 CFR Part 33, including, but not limited to, 40 CFR 33.301, 33.302, and 33.501, and shall maintain records relating thereto. The Recipient accepts the applicable Minority and Women's Business Enterprises fair share objectives negotiated with U.S. EPA by the Illinois EPA as follows:

Minority Business Enterprises ("MBE"):	5%
Women's Business Enterprises ("WBE"):	12%

Pursuant to 40 CFR 33.301, the Recipient certifies that it will make the following good faith efforts whenever procuring construction, equipment, services, and supplies under an Illinois EPA financial assistance agreement, and to ensure that subcontractors, subrecipients, loan recipients, and prime contractors also comply. Records documenting compliance with these six good faith efforts shall be retained:

- a) Ensure Disadvantaged Business Enterprises ("DBE") are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the United States Department of Commerce.
- f) If the Recipient awards subcontracts, the Recipient must take the steps in paragraphs (a) through (e) of this Contracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms Section.

The Recipient agrees to complete and submit U.S. EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal Fiscal year reporting period the Recipient receives the award, and continuing until the project is completed. United States EPA Form 5700-52A may be

obtained from the U.S. EPA Office of Small Business Program's home page on the Internet at www.epa.gov/osbp.

For purposes of this certification, "Disadvantaged Business Enterprise" or "DBE" has the same meaning as provided in 40 CFR 33.103.

8. More Favorable Terms Clause

All Agreements that include the rental or lease of electronic data processing equipment shall include a clause that if more favorable terms are granted by the lessor, supplier, dealer, or manufacturer to any similar state or local governmental agency in any state in contemporaneous leases or rental agreements covering data processing equipment let under the same or similar financial terms and circumstances, the more favorable terms shall be applicable to all agreements or contracts made by any similar Illinois state agency for the rental or lease of comparable data processing equipment from the lessor, supplier, dealer, or manufacturer.

9. Violating Facilities

The Recipient or any approved subcontractor is prohibited from using any of the facilities included on the U.S. EPA list of Violating Facilities unless and until the U.S. EPA eliminates the name of such facility from the listing. A searchable database of parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits is maintained at www.epls.gov.

10. Fraud and Other Unlawful or Corrupt Practices

The Recipient certifies that it will effectively pursue available state or local legal and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices, which are brought to its attention, such as bribery, graft, or kickbacks. The Recipient bears the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct. The Recipient must advise the Illinois EPA immediately when any such allegation or evidence comes to its attention, and must periodically advise the Illinois EPA of the status and ultimate disposition of any such matter.

11. Educational Loans & Debt Delinquency

The Recipient certifies that it, its staff, and any subcontractors are not in default on an educational loan as provided in Section 3 of the Educational Loan Default Act.

The Recipient certifies that it, its staff, and any subcontractors are not barred from being awarded a contract under Section 50-11 of Article 50 of the Illinois Procurement Code (30 ILCS 500/50-11) which provides that "No person shall submit a bid for or enter into a contract with a State agency under this Code if that person knows or should know that he or she or any affiliate is delinquent in the payment of any debt to the State, unless the person or affiliate has entered into a deferred payment plan to pay off the debt." 30 ILCS 500/50-

11(a). The Recipient and all subcontractors acknowledge that the Illinois EPA may declare the contract void if this certification is false.

12. Sarbanes-Oxley Act of 2002/Illinois Securities Law of 1953

The Recipient certifies that it, its staff, and any subcontractors are not barred from being awarded a contract under Section 10.5 of Article 50 of the Illinois Procurement Code (30 ILCS 500/50-10.5), which provides that “no business shall bid or enter into a contract with the State of Illinois or any State agency if the business or any officer, director, partner, or other managerial agent of the business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 for a period of 5 years from the date of conviction.” 30 ILCS 500/50-10.5. The Recipient and all subcontractors acknowledge that the Illinois EPA may declare the contract void if this certification is false.

13. Bid Rigging and Bid Rotating

The Recipient certifies that it has not violated Section 33E-3 of the Criminal Code of 1961 (720 ILCS 5/33E-3) during the 5-year period ending on the date of the Agreement. The Recipient certifies that it has never violated Section 33E-4 of the Criminal Code of 1961 (720 ILCS 5/33E-4). The Recipient and all subcontractors acknowledge that the Illinois EPA may declare the contract void if this certification is false.

14. Suspension and Debarment

Recipient must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532 includes a term or condition requiring compliance with Subpart C of 2 CFR Part 180. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required by 2 CFR 180.335 may result in: (a) the delay of this Agreement; (b) this Agreement becoming void; and (c) pursuit of legal remedies by Illinois EPA, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov.

15. Bribery

The Recipient certifies that it or its representatives have not been convicted of bribing or attempting to bribe an officer of the State of Illinois, nor has the Recipient made an admission of guilt of such conduct which is a matter of record. The Recipient and all subcontractors acknowledge that the Illinois EPA may declare the contract void if this certification is false.

16. Drug Free Workplace Certification

The Recipient certifies that it will provide a drug free workplace as required by the Drug Free Workplace Act (30 ILCS 580/1), and will comply with all the provisions of that Act. Under

Federal law, the Recipient must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200-36.230.

17. Privity of Agreement

The Agreement is expected to be funded in part with funds from the U.S. EPA. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to the Agreement or any lower tier agreement under these certifications and conditions. This Agreement is subject to regulations contained in 40 CFR Part 31 in effect on the date of the assistance award for this project.

18. Covenant Against Contingent Fees

The Recipient warrants that no person or selling agency is currently or will be employed or retained to solicit or secure the Agreement for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the Illinois EPA will have the right to void the Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

19. Compliance with Government-wide Guidance on Lobbying Restrictions

The Recipient certifies that the requirements of Section 1352 of Title 31 of the United States Code have been met with regard to the Agreement. The Recipient agrees to comply with 40 CFR Part 34, *New Restrictions on Lobbying*. Pursuant to Part 34, the Recipient certifies, to the best of Recipient's knowledge and belief, that:

- a) no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b) if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL ("Disclosure Form to Report Lobbying") in accordance with its instructions; and
- c) The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when these certifications and conditions were executed. Submission of this certification is a

prerequisite, imposed by Section 1352, Title 31, U.S. Code, for making or entering into the Agreement. Therefore, the Illinois EPA may declare the contract void if this certification is false. The Recipient shall include the above language in award documents for all subawards and require that subrecipients submit certification and disclosure forms accordingly.

The Recipient shall abide by the applicable Office of Management and Budget (“OMB”) Circular A-21, A-87, or A-122, all of which prohibit the use of federal grant funds for litigation against the United States, for lobbying, or other political activities.

In accordance with the Byrd Anti-Lobbying Amendment, any Recipient who makes a prohibited expenditure under 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

20. Single Audit Act

Any Recipient annually receiving \$500,000.00 or more in federal funds must comply with the Single Audit Act in accordance with OMB Circular A-133. The Recipient must submit to the Illinois EPA no less frequently than every two years, an independent audit report covering the award prepared in accordance with the provisions of OMB Circular A-133.

21. Audit and Access to Records

The Recipient certifies that it will maintain books, records, documents, and other evidence directly pertinent to performance of U.S. EPA and Illinois EPA funded work under the Agreement in accordance with generally accepted accounting practices and principals consistent with 40 CFR Part 31. The Recipient certifies that it will also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 31.36(f) for any negotiated agreement and provide a copy of that cost summary to the Illinois EPA. The U.S. EPA, the Comptroller General of the United States, the U.S. Department of Labor, the Illinois EPA, the Illinois Attorney General, and the Auditor General or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The Recipient will provide proper facilities for such access and inspection.

Audits conducted under this certification shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or auditing agencies.

The Recipient certifies that it will maintain, for a minimum of five (5) years after the completion of the Agreement, adequate books, records, and supporting documents to verify the amounts, receipts, and uses of all disbursements of funds passing in conjunction with the Agreement; and the Recipient agrees to cooperate fully with any audit conducted by the Auditor General and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the

Agreement for which adequate books, records, and supporting documentation are not available to support the purported disbursement of the funds.

In addition, records that relate to (i) any controversy arising under a U.S. EPA assistance agreement, (ii) litigation, (iii) the settlement of claims arising out of such performance, or (iv) records that relate to costs or items to which an audit exception has been taken shall be maintained and made available by the Recipient until three (3) years after the date of resolution of the appeal, litigation, claim, or exception.

In addition to the access to records provisions of Title 40 of the CFR, cited above, the Recipient agrees to allow any appropriate representative of the Office of Inspector General to (1) examine any records of the Recipient, and of its procurement contractors and subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the procurement contract, subcontract, grant or subgrant; and (2) interview any officer or employee of the recipient, subcontractor, grantee, subgrantee, or agency regarding such transactions.

Access to records is not limited to the required retention periods. The Recipient certifies that the authorized representatives designated in paragraph 1 of this Audit and Access to Records Section will have access to records at any reasonable time for as long as the records are maintained.

- a) This Audit and Access to Records Section applies to financial records pertaining to all financial assistance agreements and all amendments to those agreements regardless of the type of agreement. In addition this section applies to all records pertaining to all agreements and amendments to those agreements:
- b) to the extent the records pertain directly to financial assistance agreement performance;
- c) if there is any indication that fraud, gross abuse, or corrupt practices may be involved; and
- d) if the financial assistance agreement is terminated for substantial failure or for convenience.

The Recipient is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of Illinois EPA grant funds may result in criminal, civil or administrative fines and penalties.

22. Indemnity

Neither Recipient, its staff, and any of its subcontractors nor Illinois EPA shall be liable for any negligent or intentional acts or omissions chargeable to the other, unless such liability is imposed by law. The Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one party to the other or to a third party.

The Recipient agrees to defend, indemnify and hold harmless the State of Illinois including the Illinois EPA, its officers, employees, agents and volunteers from any and all costs,

demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, caused by, arising out of, or occurring in connection with (a) this Agreement, (b) any actual or alleged death or injury to any person, damage to any property, or any other damage or loss suffered, claimed to result in whole or in part from this Agreement, or (c) any act, activity or omission of Recipient or any of its employees, representatives, contractors, subcontractors, or agents.

23. Recycling and Waste Prevention

In accordance with the policies set forth in U.S. EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and 40 CFR 30.16, the Recipient certifies that recycled paper and double sided printing will be used for all reports which are prepared as a part of the Agreement and delivered to Illinois EPA and U.S. EPA. This certification does not apply to reports prepared on forms supplied by Illinois EPA or U.S. EPA, or to Standard Forms.

24. Trafficking Victim Protection Act of 2000

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

- a) Illinois EPA, as the awarding Agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity:
 - i. is determined to have violated an applicable prohibition in the Prohibition Statement below; or
 - ii. has an employee who is determined by Illinois EPA to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either:
 1. associated with performance under this award; or
 2. imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)." You must inform Illinois EPA immediately of any information you receive from any source alleging a violation of prohibition in the Prohibition Statement below.
- b) Illinois EPA's right to terminate unilaterally that is described in paragraph (a) of this Trafficking Victim Protection Act of 2000 Section of this award term:
 - i. implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. is in addition to all other remedies for noncompliance that are available to Illinois EPA under the Agreement.
- c) The Recipient must include the requirements of the Prohibition Statement below in any subaward the Recipient makes to a private entity.

Prohibition Statement – The Recipient, the Recipient's employees, subrecipients under these certifications and conditions, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the Agreement is in effect;

procure a commercial sex act during the period of time that the Agreement is in effect; or use forced labor in the performance of the Agreement or lower tier agreements under these certifications and conditions.

25. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The Recipient certifies that money received under terms of the Agreement will not be used for management fees or similar charges.

The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under the Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

26. Hotel-Motel Fire Safety

The Recipient certifies that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act, pursuant to 40 CFR 30.18 and 15 USC 2225a. Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act.

CONDITIONS:

27. Supersession

The Illinois EPA and the Recipient agree that the provisions of 40 CFR Part 31 supersede any conflicting provisions of this Agreement.

28. Right of Illinois EPA to Products of the Agreement

The Recipient certifies that the Illinois EPA has the right to use (including, but not limited to, citing to, circulating, displaying, and reproducing) all products that result from the Recipient receiving financial assistance under the Agreement whether the product is developed by the Recipient or a subrecipient.

29. Appropriation Contingency (Multiyear)

The obligations of the State of Illinois and Illinois EPA to provide financial assistance will cease immediately without any penalty, accelerated payment, or other recoupment mechanism being required by the Recipient if in any fiscal year the Illinois General Assembly or funding source fails to make an adequate appropriation or otherwise make available sufficient funding to cover the Illinois EPA’s Agreement obligations.

30. Availability of Appropriations; Sufficiency of Funds

This Agreement is contingent upon and subject to the availability of sufficient funds. The Illinois EPA may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if (i) sufficient State funds have not been appropriated to the Illinois EPA or sufficient Federal funds have not been made available to the Illinois EPA by the Federal funding source, (ii) the Governor or the Illinois EPA reserves appropriated funds, or (iii) the Governor or the Illinois EPA determines that appropriated funds [or Federal funds] may not be available for payment. The Illinois EPA shall provide notice, in writing, to the Recipient of any such funding failure and its election to terminate or suspend this Agreement as soon as practicable. Any suspension or termination pursuant to this Section will be effective upon the recipient's receipt of notice.

31. Liability of the Illinois EPA

The Recipient agrees that no personal claim shall be made of, or honored by, any independent contractor, employee, or member of the Illinois EPA by reason of any provision of the Agreement. If the appropriation of funds by the General Assembly of the State of Illinois available for payment of financial assistance agreements is exhausted, no State agency or State office, nor any independent Contractor, employee or member of the Illinois EPA will be obligated to pay the Recipient anything under the terms of the Agreement, and the Recipient will not be held to the terms of the Agreement after such exhaustion. Prior to fund exhaustion, the Illinois EPA must make a positive effort to notify the Recipient of exhaustion.

32. Disputes

Any dispute arising under the Agreement that is not disposed of by provisions of the Agreement shall be decided by the Director of the Illinois EPA or a duly authorized representative, who will render a decision in writing and mail or otherwise furnish a copy thereof to the Recipient. The decision of the Director of the Illinois EPA shall be final.

33. Amendments

These conditions and certifications must be attached to the final Agreement entered into between the Illinois EPA and the Recipient. The Agreement, these conditions and certifications, and any attachments constitute the entire agreement between the parties. No amendment to the Agreement shall take effect until approved in writing, by the Illinois EPA and the Recipient.

If a time extension is necessary to extend the period of availability of funds (Agreement Period), the Recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the Illinois EPA not later than ninety (90) days before the Agreement Period expiration date.

34. Termination

- a) The Agreement may be terminated, in writing, in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party. Termination under this paragraph is not effective unless the failing party is provided: (i) at least ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (ii) an opportunity for consultation with the terminating party prior to termination.
- b) The Agreement may be terminated, in writing, in whole or in part by the Illinois EPA for the Illinois EPA's convenience. Termination under this paragraph is not effective unless the Recipient is provided: (i) at least ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (ii) an opportunity for consultation with the Illinois EPA prior to termination.
- c) If termination for substantial failure is effected by the Illinois EPA, under paragraph (a) of this Termination Section, an equitable adjustment in the price provided for in the Agreement shall be made. However, no adjustment in the price shall be allowed for anticipated profit on unperformed services or other work, and any payment due to the Recipient at the time of termination may be adjusted to cover any additional costs to the Illinois EPA resulting from the Recipient's substantial failure. If termination for substantial failure is effected by the Recipient, under paragraph (a) of this Termination Section, or if termination for convenience is effected by the Illinois EPA, under paragraph (b) of this Termination Section, the equitable adjustment shall include a reasonable profit for services or other work performed by the party that initiates termination.
- d) The equitable adjustment for a termination either (i) initiated by the Recipient under paragraph (a) of this Termination Section, or (ii) initiated by Illinois EPA under paragraph (b) of this Termination Section, shall provide payment to the Recipient for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs incurred by the Recipient relating to firm commitments entered into prior to termination.
- e) Upon receipt of a termination action under paragraphs (a) or (b) of this Termination Section, the Recipient must 1) promptly discontinue all affected work (unless the notice directs otherwise), and 2) deliver or otherwise make available to the Illinois EPA all data, drawing, specifications, reports, estimates, summaries and such other information and materials accumulated by the Recipient in performing the Agreement, whether those items are complete or incomplete.
- f) Upon termination under paragraphs (a) or (b) of this Termination Section, the Illinois EPA may take over the work under the Agreement and may award the same or a similar agreement to another recipient to complete the work under the Agreement.
- g) If, after termination for failure of the Recipient, under paragraph (a) of this Termination Section, it is determined that the Recipient did not fail to fulfill the Agreement obligations, the termination will be deemed to have been for the convenience of the Illinois EPA, under paragraph (b) of this Termination Section. In such event, adjustment of the price provided for in the Agreement shall be made as provided in paragraph (d) of this Termination Section.

35. Payments

Requests for payment must be submitted by the Recipient's authorized representative no more frequently than monthly. Additionally, requests for payment must be submitted within 45 days after the work, subject of the request, has been completed.

Each request must detail the amount and value of the work performed and must be accompanied by such supporting documentation as required by the Illinois EPA. The Recipient may transfer amounts among the cost categories designated in the Estimated Allowable Project Cost Summary provided the categories do not increase or decrease by more than fifteen (15) percent. Transfer in excess of fifteen (15) percent may be made only after written approval by the Illinois EPA. The requests for payment shall be submitted to:

Illinois Environmental Protection Agency
Attention: Fiscal Service
Mail Code #2
P.O. Box 19276
Springfield, Illinois 62794-9276

The Illinois EPA may withhold payment to the Recipient if the Recipient's progress in completing the scope of work does not meet the project schedule contained in the Agreement to the satisfaction of Illinois EPA. The Illinois EPA may withhold payment to the Recipient if Recipient fails to file required reports.

The Illinois EPA retains the right to withhold ten (10) percent of the assistance amount, as identified in the Estimated Allowable Project Costs Section of the Agreement, until all products outlined in the Project Scope of Work are submitted and approved by Illinois EPA.

Upon satisfactory completion of the work performed under the Agreement, as a condition before final payment under the Agreement or as a termination settlement under the Agreement the Recipient must execute and deliver to the Agency a release of all claims against the Agency arising under the Agreement. Unless otherwise provided in the Agreement or in another writing executed by both the Illinois EPA and the Recipient, final payment under the Agreement or settlement upon termination of the Agreement shall not constitute a waiver of any claim that the Agency may have pertaining to the Agreement against any party affected by the Agreement.

All funds remaining at the end of the grant agreement or at the expiration of the period of time grant funds are available for expenditure or obligation by the Recipient shall be returned to the State within 45 days.

Upon review of this document, complete page 2 and return the document to the Illinois EPA.
--

PROFESSIONAL SERVICES AGREEMENT

PROJECT: 2015-2016 CEDAR LAKE 319 IMPROVEMENTS HMG JOB #: _____

CLIENT: CITY OF CARBONDALE

ADDRESS: 200 South Illinois Avenue, Carbondale, IL 62902-2047

CONTACT: Sean Henry, P.E., Public Works Director TEL: (618) 549-5302 x271 FAX: (618) 457-3283

CONSULTANT: HMG ENGINEERS, INC.

ADDRESS: 1032 N. 6th Street, Murphysboro, IL 62966

CONTACT: Butch W. Cheatham, P.E. bcheatham@hmgengineers.com TEL: (618) 684-9355 FAX: (618) 684-9355

PROJECT DESCRIPTION: Cedar Lake Improvements made in part with grant funds received from Illinois EPA through Section 319(h) of the Clean Water Act.

SCOPE OF SERVICES: CONSULTANT'S Scope of Services is attached hereto (2 pages).

- LUMP SUM. Compensation for these services shall be a Lump Sum of \$ _____.
- TIME AND MATERIALS. Compensation for these services will not exceed \$ 160,000.00 without written authorization and will be based on the following option (per the attached Estimate of Professional Services or List of Hourly Rates), plus Reimbursable Expenses times a factor of 1.00 and Subconsultant Expenses times a factor of 1.10 and per CONSULTANT'S attached Definitions.
- CONSULTANT's Salary Cost times a factor of _____
 CONSULTANT's Standard Hourly Rates (reverse side).
- COST PLUS FIXED FEE. Compensation for these services shall be CONSULTANT'S Cost plus a fixed professional fee, including Reimbursable Expenses times a factor of 1.00 plus Subconsultant Expenses times a factor of 1.10 and per CONSULTANT'S attached Definitions. The estimated compensation for services is \$ _____ plus a fixed fee of \$ _____ for a total of \$ _____.

Salary Cost or Standard Hourly Rates for Time and Materials or Cost plus Fixed Fee contracts are subject to change annually on May 1 to reflect adjustments in CONSULTANT'S salary levels.

In the event services beyond those specified in the Scope of Services and not included in the compensation above are required, CONSULTANT shall submit a fee estimate for such services and a contract modification shall be negotiated and approved by the CLIENT prior to any effort being expended on such services.

EXECUTION: Execution of this document by duly authorized representatives of CONSULTANT and CLIENT, including CONSULTANT'S Standard Conditions (reverse side) and any attachments, Additional Provisions as indicated, and addenda, represents the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties. Neither CONSULTANT nor CLIENT shall assign, transfer, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the other.

CLIENT: <u>CITY OF CARBONDALE, ILLINOIS</u> BY: <u>John Henry</u> SIGNATURE: _____ TITLE: <u>Mayor</u> ATTEST: <u>Jennifer Sorrell</u> SIGNATURE: _____ TITLE: <u>City Clerk</u> DATE: _____	CONSULTANT: <u>HMG ENGINEERS, INC.</u> BY: <u>Scott A. Rakers, P.E.</u> SIGNATURE: _____ TITLE: <u>Executive Vice President</u> ATTEST: <u>Brian R. Buchheit, P.E., BCEE</u> SIGNATURE: _____ TITLE: <u>Secretary-Treasurer/CFO</u> DATE: _____
---	--

STANDARD CONDITIONS

1. SERVICES. CONSULTANT shall provide professional services in accordance with the agreed upon scope of work.

2. INITIATION. CONSULTANT is authorized to proceed with services upon receipt of an executed Agreement or written Notice to Proceed.

3. COMPLETION/TERMINATION. This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. This contract may be terminated by the CLIENT and/or CONSULTANT upon 10 days written notice. In the event of such termination, CONSULTANT will be paid the portion of the compensation (and fixed fee, if applicable) for services performed in accordance with the scope of services under the terms of this Agreement to the date of termination together with all costs arising out of such termination.

Continuing Service Agreements shall be reviewed annually for rates and shall remain in force until terminated in writing by either party, or otherwise stipulated contractually.

4. STANDARD OF CARE. Services provided by CONSULTANT under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. CONSULTANT makes no warranty or guaranty, either express or implied.

5. INDEPENDENT CONSULTANT. CONSULTANT is and shall be at all times during the term of this Agreement an independent CONSULTANT and not an employee or agent of the CLIENT.

6. COMPLIANCE WITH LAWS. CONSULTANT will endeavor to comply with Federal, State, and local laws and ordinances applicable to the services to be provided under this Agreement.

7. PAYMENT TERMS. CONSULTANT shall be paid monthly on the basis of invoices submitted. These invoices will be for the portion of the agreed upon compensation earned by CONSULTANT during that month. (Cost plus Fixed Fee will be for costs incurred during the invoice period plus the portion of the agreed upon fixed fee earned by CONSULTANT during that month. Lump Sum will be based on percent of effort completed as estimated by CONSULTANT). CONSULTANT shall be paid for all invoices within 30 days of submittal. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of 1.5% per month. If CLIENT fails to make payment within sixty (60) days of the invoice date, CONSULTANT shall be entitled to collect from the CLIENT any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by CONSULTANT in connection therewith and, in addition, the reasonable value of CONSULTANT's time and expenses spent in connection with such collection action, computed at CONSULTANT's prevailing fee schedule and expense policies.

8. OWNERSHIP OF DOCUMENTS. Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of CONSULTANT. CONSULTANT will retain all common law, statutory, and other reserved rights, including the copyright thereto. CONSULTANT shall not be held liable for reuse of documents or modifications thereof by the CLIENT or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to CONSULTANT.

9. ACCESS TO SITE. Unless otherwise stated, the CONSULTANT shall have access to the site for activities necessary for the performance of services. CONSULTANT shall take reasonable precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damages and will not be responsible for such costs.

10. SITE VISITS/OBSERVATION. If included in the Scope of Work, CONSULTANT shall visit the project and/or construction site at appropriate intervals to become generally familiar with the progress, quality of work (contractors' work), and to determine if the work is proceeding in general accordance with the Contract Documents. Visits to the project site and observations made by CONSULTANT as part of services during construction under Agreement shall not make CONSULTANT responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make CONSULTANT responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s) and for all safety precautions incidental thereto.

11. HAZARDOUS CONDITIONS. The parties acknowledge that CONSULTANT's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If CONSULTANT or any other party encounters a Hazardous Environmental Condition, CONSULTANT may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion

of the Project affected thereby until CLIENT: (i) retains appropriate specialty subconsultant or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

12. INSURANCE. CONSULTANT will provide a certificate of insurance upon request.

13. INDEMNIFICATION & WAIVER. CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees, and subconsultants from and against all damages, liabilities, or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the CONSULTANT'S services under this Agreement, excepting only those damages, liabilities or costs arising from the sole negligence of the CONSULTANT.

14. DISPUTES. Any action for claims arising out of or relating to this Agreement and/or respective services shall be governed by the laws of the State of Illinois. Venue shall be in Clinton County Circuit Court. Mediation is an express condition precedent to the filing of any legal action. Unless the parties agree otherwise, the mediation shall be conducted pursuant to the Construction Mediation Rules of the American Arbitration Association.

15. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES. CONSULTANT and the CLIENT agree that if the services do not include construction phase services, the CLIENT shall be solely responsible for interpreting the Contract Documents and observing the work of the contractor(s) to discover, correct or mitigate errors, inconsistencies or omissions. If the CLIENT authorizes deviations, recorded or unrecorded, from the documents prepared by CONSULTANT, the CLIENT shall indemnify and hold CONSULTANT, its agents and employees harmless from and against claims, losses, damages, and expenses, including but not limited to defense costs and the time of CONSULTANT, to the extent such claim, loss, damage or expense arises out of or results in whole or in part from such deviations, regardless of whether or not such claim, loss, damage or expense is caused in part by a party indemnified under this provision.

16. OPINIONS OF PROBABLE CONSTRUCTION COSTS are prepared on the basis of CONSULTANT'S experience and qualifications and represent CONSULTANT'S judgment as a professional generally familiar with the industry. However, since CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, CONSULTANT cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from CONSULTANT'S opinions or estimates of probable construction cost.

17. CLIENT-PROVIDED INFORMATION. CONSULTANT is not required to check or verify CLIENT-provided information or the technical adequacy or compliance of any portion of the project designed by the CLIENT'S consultants. CONSULTANT assumes no responsibility for the accuracy of information provided by the CLIENT or of design information provided by others, excluding the firm's subconsultants. The CLIENT agrees to defend and indemnify CONSULTANT for any delays, costs, losses, or damages caused by false, inaccurate, or non-compliant information provided by the CLIENT or the CLIENT'S consultants.

18. LIMITATION OF LIABILITY. In recognition of the relative risks and benefits of the Project to both the CLIENT and the CONSULTANT, the risks have been allocated such that the OWNER agrees that, to the fullest extent permitted by law, the CONSULTANT'S total liability to the CLIENT for any and all injuries, damages, claims, losses, expenses or claim expenses arising out of this Agreement from any cause or causes, shall not exceed the lesser of the amount of the fee or \$50,000.00. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

19. STANDARD HOURLY BILLING RATES.

CLASSIFICATION	I	II	III	IV
Technical Intern	\$50.00			
Admin. Assistant	\$55.00	\$60.00	\$65.00	\$70.00
Technician	\$75.00	\$85.00	\$95.00	\$105.00
Surveyor (PLS)	\$115.00			
Scientist	\$85.00	\$100.00	\$115.00	\$140.00
Project Engineer	\$95.00	\$100.00	\$105.00	\$110.00
Project Manager	\$115.00	\$125.00	\$135.00	\$145.00
Regional Manager	\$170.00			
Principal	\$180.00			

20. EXPENSE REIMBURSEMENT. (i) Mileage – Current IRS rates apply. (ii) Survey boat rental - \$100/day. (iii) Meals – At cost not to exceed \$8.00.

SCOPE OF SERVICES
City of Carbondale
2015 – 2016 Cedar Lake Work
July 23, 2015

Summary of Services: Survey, design, construction documents, opinions of probable construction cost, bid evaluation, construction observation and final project documentation and reporting for the work as identified in the Financial Assistance Agreement number _____ between the Illinois Environmental Protection Agency Bureau of Water and the City of Carbondale.

Construction work as planned includes:

- A. 12,200 feet of shoreline stabilization
- B. 7,100 feet of gully stabilization

Detail of Engineer's services to be performed:

1. Utilizing information obtained during the Illinois EPA Clean Lakes Phase 1 Diagnostic and Feasibility Study of Cedar Lake and with consideration of previous shoreline work done, select the shoreline areas to receive stabilization measures. Meet with City staff to confirm and agree to the locations of all areas to receive such work.
2. Conduct field surveys of selected shoreline areas to include measurements of shoreline length and cross sections at appropriate intervals to define the appropriate stabilization measures.
3. Evaluate need for a second staging area (material transfer facility from truck to boat). Present this evaluation to City staff for agreement as to the need for this facility anticipated to be located at the Pamona boat launch area if constructed. Proceed with project design for this staging facility if it is determined to be needed.
4. Using previous studies, including the "Watershed Needs Evaluation" done in conjunction with IEPA grant number 3190911 combined with local knowledge of City staff on prioritization of need, locate the approximate 7,100 feet of gully to be stabilized.
5. Conduct field surveys of selected gully areas to receive stabilization measures, including surface topography as necessary to develop construction drawings for required stabilization measures.
6. Design all improvements in accordance with the requirements of the IEPA and the City, including Best Management Practices (BMPs) with due consideration given to cost, long-term maintenance requirements and service life of the facilities.
7. Estimate pollutant load reductions attributable to the BMP installations above using IEPA procedures and publications.

8. Develop construction drawings and specifications (bidding documents) for the referenced improvements, including estimates of probable construction cost. Present all documents to the City for approval.
9. Upon City approval, submit construction documents, including BMP application forms to the IEPA for approval.
10. Supply the City the appropriate number of copies for bidding. It is anticipated that bidding documents will include scale drawings in 11 X 17 inch size if possible.
11. Assist the City in evaluation of bids.
12. Provide construction oversight. Construction oversight shall include initial staking and field visits at minimum intervals of twice weekly with the frequency adjusted to fit the pattern of work in progress.
13. Review and approve periodic payment requests from the contractors.
14. Review and approve final construction work and final payment to contractors.
15. Prepare Final Project Report, including as-built drawings and submit to the City for approval. Subsequent to City approval, submit same to the IEPA for review and approval.

Additional Understandings:

- a. It is understood that the City has obtained the necessary Illinois Joint Permit (404 permit) for all shoreline work.
- b. Should any of the proposed work involve access to or across private property, such access rights will be obtained by the City for the Engineer and construction work, if applicable.
- c. Final locations selected for gully stabilization work will be evaluated by Engineer's staff for jurisdictional authority with regard to the possible need for an Illinois Joint Permit for such work. If this evaluation results in a positive opinion on the need for such permit, additional time required for the filing and follow up work relative to such permitting may need to be considered outside the Engineer's scope of services to be provided.