



Chicago Metropolitan Agency for Planning

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October 19, 2012

REQUEST FOR QUALIFICATIONS (RFQ) NO. 017

WATER RESOURCES ENGINEERING TECHNICAL SUPPORT

Chicago Metropolitan Agency for Planning (CMAP) is requesting proposals from interested firms to provide Water Resources Engineering Technical Support as described in the enclosed Request for Qualifications (RFQ).

If your firm is qualified and experienced in performing the described services, CMAP would appreciate receiving your proposal as indicated in the RFQ. The deadline for receipt of submissions in response to the RFQ is **3:00 p.m., November 9, 2012.**

Thank you, and if you have any questions, please call me at (312) 386-8788.

Sincerely,

Margaret McGrath
Grant/Contract Officer

Enclosure

RFQ NO. 017

WATER RESOURCES ENGINEERING TECHNICAL SUPPORT

The Chicago Metropolitan Agency for Planning (CMAP) invites appropriate individuals, firms, organizations, or institutions to submit proposals to provide Water Resources Engineering Technical Support services as described in this Request for Qualifications (RFQ). Please read each section carefully for information regarding the proposal and submittal instructions.

SECTION 1: Background and General Information

About CMAP

The Chicago Metropolitan Agency for Planning (CMAP) is the official regional planning organization for the northeastern Illinois counties of Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will. CMAP developed and now guides the implementation of GO TO 2040, metropolitan Chicago's first comprehensive regional plan in more than 100 years. To address anticipated population growth of more than 2 million new residents, GO TO 2040 establishes coordinated strategies that help the region's 284 communities address transportation, housing, economic development, open space, the environment, and other quality-of-life issues. See www.cmap.illinois.gov for more information.

Project Background

As the official regional planning organization for northeastern Illinois, CMAP has also been delegated responsibility by the State of Illinois to implement relevant Sections of the Clean Water Act (P.L. 92-500) for the region. In conjunction with implementing the goals of the Clean Water Act, CMAP is involved in several water resource activities including watershed planning, [facility area planning](#) reviews (FPA), and Local Technical Assistance Program [LTA](#) planning projects. These activities are guided through recommendations from [Go To 2040](#), [Water 2050](#), the [Illinois Water Quality Management Plan](#) and the [Areawide Water Quality Management Plan](#). CMAP's Areawide Water Quality Management responsibilities are outlined on our website: [Water Quality Management -- Chicago Metropolitan Agency for Planning](#).

Statement of Purpose

CMAP's team of water resource professionals lead the work described above, however, CMAP currently does not have a water resources engineer on staff. The purpose of this RFQ is to select an engineering consultant who will provide engineering technical assistance to CMAP staff in advancing water resources objectives. As part of the RFQ, a primary consultant and a secondary consultant will be selected to provide services. If there is a conflict of interest for the primary consultant, the secondary consultant will provide services.

All of the work that will occur under this contract will be on a task order basis, since we cannot yet specify which projects will require engineering assistance or which projects will be funded. Not all of the scope tasks listed may require assistance during the contract period. Following are some work areas CMAP anticipates may require engineering assistance within the next year:

As an example of FPA assistance that may be requested; there are three areas that may require assistance.

- Work requested will involve review of [FPA amendment applications](#) and all supporting materials. Consultants may anticipate receipt of between 1 to 5 amendment applications annually; however, this is just an estimate and is subject to change. Work may involve interaction and data collection with area elected officials, sanitary districts, environmental advocacy groups, homebuilders, developers, community organizations, the IEPA and the general public.
- The Illinois Environmental Protection Agency has recently made significant changes to the FPA process. In the interest of streamlining the FPA process and adding value to overall water quality

protection efforts, CMAP is revising its [FPA amendment process and procedures manual](#), checklist, and application to better protect water quality by implementing regional planning goals from [Go To 2040](#).

- A comprehensive land application analysis document will be developed in conjunction with the updated FPA procedures manual. Updating the amendment process and procedures manual will require developing a land application analysis framework document to guide applicants through a comprehensive analysis of applying treated wastewater to land. It will also require technical and policy support in the development of a revised FPA procedures manual, application, and application checklist. Work regarding CMAP's revision process is expected to require 20 to 30 hours.

Assistance for [CMAP's Local Technical Assistance \(LTA\) Program](#) may include technical engineering support and policy recommendations addressing stormwater management issues in municipal comprehensive plans and water resource protections in the development of ordinances, codes, and standards for watershed-based plan recommendations. Over the next year, this work is expected to involve possibly four projects that will be led in house by CMAP staff requiring 30-60 hours each.

Work may also include identifying nonpoint source best management practices (BMPs) to be implemented throughout a targeted watershed in order to achieve the load reductions estimated in a watershed-based plan or [TMDL](#) implementation plan. Other work may include assisting with BMP implementation inventories for select watersheds and providing technical assistance to entities undertaking BMP implementation. This work could involve 50-200 hours per year over the next two years.

General Information

As a result of responses to this RFQ, CMAP plans to review submissions and conduct interviews with selected consultants it determines can best meet the requirements outlined below. Negotiations will be held as necessary to select the contractor that CMAP believes can best satisfy its requirements at rates it perceives are reasonable for the services provided. Subject to "Reservation of Rights" below, it is anticipated the term of the contract will be for a period of two (2) years with three (3) one-year options for renewal. It is expected that more than one firm will be contracted for services, with one firm designated as the primary consultant and the other(s) utilized in cases of conflict of interest.

SECTION 2: Scope of Project and Procurement Details

Scope of Services: On a task order basis, work will involve engineering technical support and policy recommendations as applicable in the areas of water quality, water supply, water re-use, stormwater, flooding, soil erosion and sediment control, watershed planning and implementation, stream/lake/wetland management, and nonpoint source pollution control BMPs, among others. Consultant responsibilities may include some of the following tasks:

- Provide technical engineering support to CMAP staff reviewing and commenting on revisions of the Facility Planning Area process procedures manual, application checklist, application, and other supporting documentation related to the process. The documents will be used as a tool to implement [Go To 2040](#).
- Develop a land application analysis framework. The framework should reflect principles outlined in both the Areawide and Illinois Water Quality Management Plans and in CMAP's Go To 2040 Regional Plan, Water 2050, and other relevant documents. The application and relevant procedures would be included as part of the Facility Planning Area Amendment application and

Procedures manual. The comprehensive framework should include guidance in the following areas:

- Potential land application site identification analysis;
 - Analysis of the cost effectiveness and likely environmental impacts to land apply treated wastewater;
 - A wastewater treatment and storage analysis;
 - An Environmental Impact Analysis
 - A land application site hydrogeology and soils analysis;
 - An analysis of water supply implications
- Review, evaluate, and prepare written comments and recommendations on local development ordinances, codes, and standards toward protecting water resources and other relevant items in support of CMAP's Local Technical Assistance Program for projects that are being led in house by CMAP staff.
 - Provide internal technical review and policy recommendations for the development of watershed plans, stormwater management plans, integrated land use and transportation plans, municipal comprehensive plans, and water supply planning and for the development of project proposal and grant applications related to such plans.
 - Review, evaluate, and prepare written comments on design plans, specifications, calculations, reports, and other supporting materials developed by local watershed stakeholder groups for nonpoint source pollution control and green infrastructure implementation projects, including appropriateness of engineering techniques proposed, pollutant load reduction calculations, hydraulic and hydrologic calculations, and compliance with local, regional, state, and federal regulatory requirements.
 - Provide watershed assessments to identify and quantify potential sources of nonpoint source pollution, identify BMPs needed to achieve the load reductions estimated in a watershed-based plan or quantified in a TMDL implementation plan, and estimate BMP implementation costs.
 - Provide water quality management plan consistency review of requests for wastewater treatment expansions, wastewater land treatment systems, boundary amendments, facility plans and specified construction and operating permits for sewers and lift stations, and domestic wastewater NPDES permits. Consistency of such reviews is based on policies and recommendations of the certified Illinois Water Quality Management Plan ([IWQMP](#)) and the Areawide Water Quality Management Plan (AWQMP) Volumes [1](#) and [2](#) for northeastern Illinois. Consistency reviews must ensure that the applications to amend the IWQMP and the AWQMP follow Criteria Numbers 1, 4, and 5. Draft reviews and written comments of such plans must be completed and submitted the Secretary of the CMAP [Wastewater Committee](#) no later than 21 days prior the CMAP's 45 day comment period for Level I amendment applications and 15 days prior to CMAP's 30 day comment period for Level II amendment applications.

Review and analyze Level I and Level II FPA amendment applications and supporting documentation will include the following:

- Analysis of the cost-effectiveness and likely environmental impacts (both water quality and land use) for proposed wastewater treatment options.
- Assessment of water pollution or damage to sensitive ecosystems and environmentally protected areas that result from changes in population, land use, etc., and may involve the preparation of map products to visually display the impacts of such changes. An analysis must include anticipated modifications to lakes, streams, wetlands (ADID, COE approved wetland delineations, and farmed), and floodplains.
- Analysis of a proposal's existing and future wastewater needs (e.g., capacities).
- Analysis of watershed considerations, including nonpoint source control strategies.

- Analysis of a proposal's CMAP's nonpoint source management ordinances (e.g. stormwater, soil erosion and sediment control, floodplain, and stream and wetland protection, water conservation, etc.) to ensure consistency with CMAP's nonpoint source management model ordinances.
- Assessment of performance of existing facilities and its effluent discharge limits in relation to the Illinois EPA's effluent standards.
- Analysis of a proposal's National Pollutant Discharge Permit (NPDES) permit and fact sheet pollutant load limits.
- Analysis of residual sludge disposal alternatives.
- Analysis of a proposal's wastewater conveyance system's sewer routes.
- Assessment of the suitability of the amendment area for urbanization within a 20 year planning horizon.

Submit written review comments and recommendations on water quality management plan consistency reviews to the Secretary of the CMAP [Wastewater Committee](#) in the format required by the contract and Committee reporting procedures.

- Provide technical and policy assistance and outreach to the CMAP [Environmental and Natural Resources Committee](#), the region's local units of government, county stormwater management agencies, partner public and non-profit agencies, watershed groups, professionals and professional associations, and the public in the implementation of environmental and natural resources planning and management. Prepare state-of-the-art reports, guides, and model ordinances on the water resource topics cited above.
- Develop comments on water resource issues on projects subject to CMAP review and comment.
- Represent CMAP in technical discussions with other engineering/planning professionals.

Licensing and Ownership of applications developed

CMAP will retain ownership of all application code, files, data and other artifacts developed during the consulting engagement.

Visual Identity

CMAP has carefully established its visual branding to reflect the agency's identity and priorities. The selected contractor must work within that established graphical framework, in consultation with the CMAP project manager and communications staff. See <http://goo.gl/MW1ut> for specifications, including graphics, typography, and usage.

Selection Process Schedule

October 19, 2012	Issue RFQ
November 9, 2012	Deadline for proposal submission
December 5-6	Interviews, if necessary
January 2012	Expected Board Approval
February 2013	Expected date Contract begins

Evaluation Criteria

All proposals submitted in response to this RFQ will be reviewed and analyzed for completeness and cost effectiveness. The following criteria will be used in evaluating proposals:

- Qualifications of firm. The individual and/or firm's general experience and history of performance on projects similar to those listed in the scope of services.

- Technical Ability. Qualifications of assigned staff that will perform the work. The education, experience, and expertise of the individual and/or firm's principals, employees and subcontractors who will be assigned key project responsibilities.
- Responsiveness of the proposal narrative to the Scope of Work
- Breadth of individual and/or firm's experience in water resources related work.

All timely responses received to this RFQ will be reviewed and interviews may be conducted with selected submitters CMAP determines can best meet the above requirements. Cost will then be evaluated against the other factors based upon the professional judgment of those involved in the evaluation. An in-house CMAP committee will make the selection decision. Bidders who are deemed most responsive may be asked to answer questions from the committee.

As applicable, hourly rates for personnel the submitter proposes to use will be requested and negotiations will be held as necessary to select the firm that CMAP believes can best satisfy its requirements at rates it perceives are reasonable for the services provided. CMAP will then negotiate a scope of work and contract with the firm judged to be most qualified to conduct this work.

SECTION 3: Submittal Requirements

Proposals must be received at CMAP on or before 3:00 p.m. Friday, November 9, 2012

Submissions must include the following and be submitted in the order presented:

1. A general description of your firm's organization, experience, services and staff. If the contractor is a multi-firm team, this should be included for each firm.
2. Narrative proposal describing previous approaches and techniques used for similar work activity of the major project responsibilities outlined in the scope of services.
3. Project Team. Identify individuals who will make up the project team and where they are positioned within the firm. If the contractor is a multi-firm team, this should be included for each firm. Pertaining to each individual, specifically provide the following:
 - a. Identification of training they may have received that is pertinent to CMAP's requirements.
 - b. A resume.
4. At least three references, including individual contact name, name of company and phone number CMAP may contact regarding the contractor's qualifications to undertake this project.
5. The submitter shall also sign and submit the "Certificate Regarding Workers' Compensation Insurance", Attachment 1, and the "Information to be provided by Bidder", Attachment 2.

Submission of Proposals

Three (3) paper copies of all proposals as well as one (1) electronic version in PDF format on CD ROM must be submitted no later than 3:00 p.m., November 9, 2012. Submissions must be in a sealed package or envelope. The applicant's organization name and address shall appear in the upper left corner of the package.

Submission of RFQ by fax or e-mail is not acceptable. Submissions may be delivered to CMAP in person or sent (by U.S. Postal Service or other reliable means) to the following address:

Chicago Metropolitan Agency for Planning
Attn: Grant/Contract Officer
Response to RFQ No. 017
233 S. Wacker Drive, Suite 800
Chicago, IL 60606

There will be no public opening for this RFQ. Late submissions will be rejected and returned unopened. Questions may be referred to Margaret McGrath, (312) 386-8788 or Email: mmcgrath@cmaphillinois.gov.

SECTION 4: Contractual Agreement and Rights

Contractual Agreement

The contract CMAP anticipates awarding as a result of this RFQ and subsequent rate submissions and negotiations, if any, will indicate the service requirements, time periods involved and applicable hourly rates. In addition, it will include the General Provisions, Section 5 hereto, and Special Provisions, Section 6 hereto, which will apply to the contract.

Reservation of Rights

CMAP reserves the following rights if using them will be more advantageous to CMAP:

- a. Withdraw this RFQ at any time without prior notice.
- b. Accept or reject any and all submissions, or any item or part thereof
- c. Postpone qualifications due date.
- d. Not award a contract to any submitter responding to this RFQ.
- e. Award a contract without negotiations or discussions.

Contractors who are or have been seriously deficient in current or recent contract performance in the absence of evidence to the contrary or circumstances properly beyond the control of the Contractor shall be presumed to be unable to meet these requirements. Past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.

SECTION 5: General Provisions

The following provisions apply to the solicitation to which this section is attached and to any contract that results from the solicitation:

1. Complete Agreement.

- a. This Agreement (which also may be herein referred to as "Contract"), including all exhibits and other documents incorporated or referenced in the agreement, constitutes the complete and exclusive statement of the terms and conditions of the agreement between CMAP and Contractor and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions.
- b. Order of Precedence: Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of the executed contract, including its exhibits; (2) the provisions of the RFQ on which the contract is based including any and all Addendums; (3) the proposal submitted to CMAP by the Contractor in response to said RFQ; and (4) any other documents cited or incorporated herein by reference.
- c. CMAP's failure to insist in any one or more instances upon the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of CMAP's right to such performance by Contractor or to future performance of such terms or conditions and Contractor's obligation in respect thereto shall continue in full force and effect. Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve it from responsibility for successfully performing the work without additional expense to CMAP.

- d. CMAP assumes no responsibility for any understanding or representations made by any of its officers, employees or agents prior to the execution of this Agreement, unless such understanding or representations by CMAP are expressly stated in this Agreement.
 - e. Changes: CMAP may from time to time order work suspension or make any change in the general scope of this Agreement including, but not limited to changes, as applicable, in the drawings, specifications, delivery schedules or any other particular of the description, statement of work or provisions of this Agreement. If any such change causes an increase or decrease in the cost or time required for performance of any part of the work under this Agreement, the Contractor shall promptly notify CMAP thereof and assert its claim for adjustment within thirty (30) days after the change is ordered. A written amendment will be prepared for agreement between CMAP and the Contractor for changes in scope, time and/or costs. No amendments are effective until there is a written agreement that has been signed by both parties. No claim by the Contractor for equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.
 - f. Changes to any portion of this Agreement shall not be binding upon CMAP except when specifically confirmed in writing by an authorized representative of CMAP.
2. Chicago Metropolitan Agency for Planning Designee. Only the Executive Director of CMAP, or designee, shall have the authority to act for and exercise any of the rights of CMAP as set forth in this Agreement, subsequent to and in accordance with the authority granted by CMAP's Board of Directors.
 3. Allowable Charges. No expenditures or charges shall be included in the cost of the Project and no part of the money paid to the Contractor shall be used by the Contractor for expenditures or charges that are: (i) contrary to provisions of this Agreement or the latest budget approved by a duly-authorized official of CMAP; (ii) not directly for carrying out the Project; (iii) of a regular and continuing nature, except that of salaries and wages of appointed principal executives of the Contractor who have not been appointed specifically for the purposes of directing the Project, who devote official time directly to the Project under specific assignments, and respecting whom adequate records of the time devoted to and services performed for the Project are maintained by the Contractor may be considered as proper costs of the Project to the extent of the time thus devoted and recorded if they are otherwise in accordance with the provisions hereof; or (iv) incurred without the consent of CMAP after written notice of the suspension or termination of any or all of CMAP's obligations under this Agreement.
 4. Reports and Methods of Payment.
 - a. Based on services performed, Contractor may submit invoices as frequently as once a month. CMAP is committed to reducing paper use and has established an electronic invoicing system. All invoices are to be submitted through email to:

accounting@cmap.illinois.gov
 - b. Subject to the conditions of this Agreement, CMAP will honor invoices in amounts deemed by it to be proper to insure the carrying out of the approved scope of services and shall be obligated to pay the Contractor such amounts as may be approved by CMAP. Invoices shall detail expenses and amount of time spent on CMAP assignments. If an invoice is not acceptable, CMAP shall promptly provide the Contractor a written statement regarding its ineligibility or deficiencies to be eliminated prior to its acceptance and processing.

- c. All payments will be transferred electronically to Contractor's business bank account. The successful Contractor will be requested to provide transfer numbers for the business bank account when the contract is finalized.

5. Audit and Access to Records.

- a. The Contractor and its subcontracts under this Agreement shall preserve and produce upon request of the authorized representatives of CMAP all data, records, reports, correspondence and memoranda of every description of the Contractor and its subcontractors, if any, under this Agreement relating to carrying out this Agreement for the purposes of an audit, inspection or work review for a period of three (3) years after completion of the project, except that:
 - (1) If any litigation, claim or audit is started before the expiration of three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
 - (2) Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.
- b. The Contractor shall include in all subcontracts, if any, under this Agreement a provision that CMAP will have full access to and the right to examine any pertinent books, documents, papers, and records of any such subcontractor involving transactions related to the subcontract for three (3) years from the final payment under that subcontract except that:
 - (1) If any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
 - (2) Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.

The term "subcontract" as used in this clause excludes purchase orders not exceeding \$2,500.

6. Suspension. If the Contractor fails to comply with the special conditions and/or the general terms and conditions of this Agreement, CMAP may, after written notice to the Contractor, suspend the Agreement and withhold further payments or prohibit the Contractor from incurring additional obligations of funds pending corrective action by the Contractor. If corrective action has not been completed within sixty (60) calendar days after service of written notice of suspension, CMAP shall notify the Contractor in writing that the Agreement has been terminated by reason of default in accordance with paragraph 11 hereof. CMAP may determine to allow such necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension provided such costs meet the provisions of the U.S. Office Management and Budget Circular A-87 in effect on the date first above written.

7. Termination.

- a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure (hereinafter termed "Termination by Default") by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be affected unless the other party is given (i) not less than seven (7) calendar days written notice (delivered by certified mail, return receipt requested) of intent to Termination by Default, and (ii) an opportunity for consultation with the terminating party prior to Termination by Default.

- b. This Agreement may be terminated in whole or in part in writing by CMAP for its convenience (hereinafter termed "Termination for Convenience"), provided that the Contractor is given not less than seven (7) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate.
 - c. If Termination by Default is effected by CMAP, an equitable adjustment in the price provided for in this Agreement shall be made, but (i) no amount shall be allowed for anticipated profit on unperformed services or other work, and (ii) any payment due to the Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to CMAP by reason of the Contractor's default. If Termination by Default is effected by the Contractor, or if Termination for Convenience is effected by CMAP, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide payment to the Contractor for services rendered and expenses incurred prior to termination, in addition CMAP may include cost reasonably incurred by the Contractor relating to commitments which had become firm prior to termination.
 - d. Upon notice of termination action pursuant to paragraphs (a) or (b) of this clause, the Contractor shall (i) promptly discontinue all services affected (unless the notice directs otherwise) and (ii) deliver or otherwise make available to CMAP all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this Agreement, whether completed or in process.
 - e. Upon termination pursuant to paragraphs (a) or (b) of this clause, CMAP may take over the work and prosecute the same to completion by agreement with another party otherwise.
 - f. In the event the Contractor must terminate this Agreement due to circumstances beyond its control, the termination shall be deemed to have been effected for the convenience of CMAP. In such event, adjustment of the price provided for in this Agreement shall be made as provided in paragraph c of this clause.
8. Remedies. Except as may be otherwise provided in this Agreement, all claims, counterclaims, disputes and other matters in question between CMAP and the Contractor arising out of or relating to this Agreement or the breach thereof will be decided by arbitration. If the parties hereto mutually agree, a request for remedy may be sought from a court of competent jurisdiction within the State of Illinois, County of Cook.
9. Equal Employment Opportunity. The Contractor will comply with Executive Order 11246 entitled "Equal Employment Opportunity," as amended by U.S. Department of Labor regulations (41 CFR Part 60). In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or an applicant for employment because of race, religion, color, sex, national origin, ancestry, or physical or mental handicap unrelated to ability. The Contractor shall take affirmative actions to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, national origin, ancestry, or physical or mental handicap unrelated to ability. Such actions shall include, but not be limited to, employment, promotion, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay, other forms of compensation, and selection for training or apprenticeship. The Contractor shall cause the provisions of this paragraph to be inserted into all subcontractors work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that such provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
10. Small and Minority Business Enterprise. In connection with the performance of this Agreement the Contractor will cooperate with CMAP in meeting its commitments and goals with respect to the maximum utilization of small business and minority business enterprises, and will use its best efforts

to insure that small business and minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

11. Political Activity. No portion of funds for this subcontract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

12. Prohibited Interest.

- a. No officer or employee of CMAP and no member of its governing body and no other public official of any locality in which the Project objectives will be carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such objectives shall (i) participate in any decision relating to any subcontract negotiated under this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; or (ii) have any financial interest, direct or indirect, in such subcontract or in the work to be performed under such contract.
- b. No member of or delegate of the Illinois General Assembly or the Congress of the United States of America, and no federal Resident Commissioner, shall be admitted to any share hereof or to any benefit arising herefrom.
- c. The Contractor warrants and represents that no person or selling agency has been employed or retained to solicit or secure this Agreement, upon an agreement or understanding for a commission, percentage, bonus, brokerage or contingent fee, or gratuity, excepting its bona fide employees. For breach or violation of this warranty CMAP shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage bonus, brokerage or contingent fee, or gratuity.

13. Patents and Copyright Responsibility.

- a. The Contractor agrees that any material or design specified by the Contractor or supplied by the Contractor pursuant to this Agreement shall not infringe any patent or copyright and the Contractor shall be solely responsible for securing any necessary licenses required for patented or copyrighted material used by the Contractor.
- b. If any claim is brought against CMAP by third parties for alleged infringement of third-party patent and copyright and intellectual rights, which claim is caused by breach of the Contractor's promise as contained in paragraph a of this clause, the Contractor shall save harmless and indemnify CMAP from all loss, damage or expense (including attorney's fees) due to defending CMAP from such claim.
- c. If the principal purpose of this Agreement is to create, develop or improve products, processes or methods; or to explore into fields which directly concern public health, safety or welfare, or if the Project is in a field of science or technology in which there has been little significant experience outside of work funded by federal assistance; and any discovery or invention arises or is developed in the course of or under this Agreement, such invention or discovery shall be subject to the reporting and rights provisions of U.S. Office of Management and Budget Circular No. A-102, and to the pertinent regulations of the grantor agency(ies) in effect on the date of execution of this Agreement. The Contractor shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts under this Agreement involving research, developmental, experimental or demonstration work.

14. Assignment.

- a. This agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, heirs, and personal representatives of CMAP and Contractor. Any successor to the Contractor's rights under this Agreement must be approved by CMAP unless the transaction is specifically authorized under federal law. Any successor will be required to accede to all the terms, conditions and requirements of the Agreement as a condition precedent to such succession.
- b. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of CMAP hereto, provided, however, that claims for money due or to become due to the Contractor from CMAP under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished to CMAP.

15. Subcontracts.

- a. Any subcontractors or outside associates or contractors required by the Contractor in connection with the services covered by this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitutions in or additions to such subcontractors, associates or contractors will be subject to the prior approval of CMAP.
- b. All subcontracts for work under this Agreement shall contain those applicable provisions which are required in this Agreement.
- c. The Contractor may not subcontract services agreed to under this Agreement without prior written approval of CMAP.

16. Conflict of Interest. In order to avoid any potential conflict or interest, the Contractor agrees during the term of this Agreement not to undertake any activities which could conflict directly or indirectly with the interest of CMAP. Contractor shall immediately advise CMAP of any such conflict of interest. CMAP shall make the ultimate determination as to whether a conflict of interest exists.

17. Ownership of Documents/Title of Work. All documents, data and records produced by the Contractor in carrying out the Contractor's obligations and services hereunder, without limitation and whether preliminary or final, shall become and remain the property of CMAP. CMAP shall have the right to use all such documents, data and records without restriction or limitation and without additional compensation to the Contractor. All documents, data and records utilized in performing research shall be available for examination by CMAP upon request. Upon completion of the services hereunder or at the termination of this Agreement, all such documents, data and records shall, at the option of CMAP, be appropriately arranged, indexed and delivered to CMAP by the Contractor.

18. Software. All software, related computer programs, and source code produced and developed by the Contractor (or authorized contractor or subcontractor thereof) in carrying out the Contractor's obligation hereunder, without limitation and whether preliminary or final, shall become and remain the property of both CMAP and the Contractor. CMAP shall be free to sell, give, offer or otherwise provide said software and related computer programs to any other agency, department, commission, or board of the State of Illinois, as well as any other agency, department, commission, board, or other governmental entity of any country, state, county, municipality, or any other unit of local government or to any entity consisting of representative of any unit of government, for official use by said entity. Additionally, CMAP shall be free to offer or otherwise provide said software and related computer programs to any current or future contractor.

CMAP agrees that any entity to whom the software and related computer programs will be given, sold or otherwise offered shall be granted only a use license, limited to use for official or authorized purposes, and said entity shall otherwise be prohibited from selling, giving or otherwise offering said software and related computer programs without the written consent of both CMAP and the Contractor.

19. Publication. CMAP shall have royalty-free, nonexclusive and irrevocable license to reproduce, publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials specifically prepared under this Agreement, and to authorize other material to do so. The Contractor shall include provisions appropriate to effectuate the purpose of this clause in all subcontracts for work under this Agreement.
20. Identification of Documents. All reports, maps, and other documents completed as part of this Agreement, other than documents exclusively for internal use within the Contractor's offices, shall carry the following notation on the front cover or a title page or, in the case of maps, in the same area which contains the name of CMAP and of the Contractor. "This material was prepared in consultation with CMAP, the Chicago Metropolitan Agency for Planning, (<http://www.cmap.illinois.gov>)."
21. Force Majeure. Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control including, but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the Federal, state or local government; national fuel shortage; or a material act of omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.
22. Workers' Compensation Insurance. The Contractor and any subcontractors shall, at their own expense, obtain and maintain Workers' Compensation insurance to cover persons employed in connection with services under this agreement. The limits for the Worker's Compensation coverage shall be no less than the statutory limits required by the State of Illinois. A certificate of insurance must be included with this contract.
23. Independent Contractor. Contractor's relationship to CMAP in the performance of this Agreement is that of an independent contractor. Contractor's personnel performing work under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of CMAP. Contractor shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including, but not limited to, social security, income tax withholding, unemployment compensation, workers' compensation insurance and similar matters.
24. Hold Harmless and Indemnity. Contractor shall indemnify, defend and hold harmless CMAP, its officers, directors, employees and agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation or settlement) for any loss, or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct of Contractor, its officers, directors, employees, agents, subcontractors or suppliers, in connection with or arising out of the performance of this Agreement.
25. Equal Employment Opportunities -- Affirmative Action Sexual Harassment. Contractor must comply with the Illinois Board of Human Rights Act and rules applicable to public funds, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
26. International Boycott. Contractor certifies that neither Contractor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export

Administration Act of 1979 or the applicable regulation of the U.S. Department of Commerce. This applies to contracts that exceed \$10,000 (30 ILCS 582).

27. Forced Labor. Contractor certifies it complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to CMAP under this agreement have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
28. Federal, State and Local Laws. Contractor warrants that in the performance of this Agreement it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. Since laws, regulations, directives, etc. may be modified from time-to-time, the Contractor shall be responsible for compliance as modifications are implemented. The Contractor's failure to comply shall constitute a material breach of this contract.
29. Section 319(h) Conditions/Certifications. If the project is funded by IEPA, the Contractor agrees to comply with all appropriate conditions, certifications, and provisions set forth in the Illinois Environmental Protection Agency Conditions/Certifications Section 319(h) Financial Assistance Agreements, which follow and are made a part thereof.

Federally Funded Agreements for DOT and HUD funds

- A. **Standard Assurances**. The Contractor assures that it will comply with all applicable federal statutes, regulations, executive orders, Federal Transit Administration (FTA) circulars, and other federal requirements in carrying out any project supported by federal funds. The Contractor recognizes that federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Contractor agrees that the most recent federal requirements will apply to the project.
- B. **Certification Regarding Lobbying**. As required by the United States Department of Transportation (U.S. DOT) regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Contractor's authorized representative certifies to the best of his or her knowledge and belief that for each agreement for federal assistance exceeding \$100,000:
 1. No federal appropriated funds have been or will be paid by or on behalf of the Contractor to any person to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of federal assistance, or the extension, continuation, renewal, amendment, or modification of any federal assistance agreement; and
 2. If any funds other than federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for federal assistance, the Contractor assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.
 3. The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements).

The Contractor understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing federal assistance for a transaction covered by 31 U.S.C. 1352. The Contractor also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less

than \$10,000 and not more than \$100,000 for each such failure.

- C. **Nondiscrimination Assurance.** As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21 at 21.7, the Contractor assures that it will comply with all requirements of 49 CFR Part 21; FTA Circular 4702.1A, "Title VI and Title VI - Dependent Guidelines for Federal Transit Administration Recipients," and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Contractor receives federal assistance.

Specifically, during the period in which federal assistance is extended to the project, or project property is used for a purpose for which the federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Contractor retains ownership or possession of the project property, whichever is longer, the Contractor assures that:

1. Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR Part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
 2. It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Contractor assures that it will submit the required information pertaining to its compliance with these requirements.
 3. It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements of 49 U.S.C. 5332 and 49 CFR Part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.
 4. Should it transfer real property, structures, or improvements financed with federal assistance to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the federal assistance is extended or for another purpose involving the provision of similar services or benefits.
 5. The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.
 6. It will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.
- D. **Control of Property.** The Contractor certifies that the control, utilization and disposition of property or equipment acquired using federal funds is maintained according to the provisions of OMB Circular A 102 Common Rule.
- E. **Cost Principles.** The cost principles of this Agreement are governed by the cost principles found in 49 CFR Part 18.22, and all costs included in this Agreement are allowable under 49 CFR Part 18.22.
- F. **Debarment.** The Contractor shall comply with Debarment provisions as contained in 2 CFR Part 1200, as amended. The Contractor certifies that to the best of its knowledge and belief, the

Contractor and the Contractor's principals: a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; b) within a three-year period preceding this Agreement have not been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (b), above; and d) have not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

The inability of the Contractor to certify to the certification in this section will not necessarily result in denial of participation in this Agreement. The Contractor shall submit an explanation of why it cannot provide the certification in this section. This certification is a material representation of fact upon which reliance was placed when CMAP determined whether to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, CMAP may terminate this Agreement for cause. The Contractor shall provide immediate written notice to CMAP if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this Part shall have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized, in writing, by CMAP. The Contractor agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by CMAP, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. The Contractor may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless the Contractor knows the certification is erroneous. The Contractor may decide the method and frequency by which it determines the eligibility of its principals. The Contractor may, but is not required to, check the Non-procurement List. If the Contractor knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation, in addition to other remedies available to the federal government, CMAP may terminate this Agreement for cause or default.

Nothing contained in this section shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- G. **Single Audit.** The Single Audit Act of 1984 (Public Law 98-502) and the Single Audit Amendments of 1996 (P.L. 104-156) require the following:
1. State or local governments that receive \$500,000 or more a year in federal financial assistance shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133.
 2. State or local governments that receive less than \$500,000 a year shall be exempt from compliance with the Act and other federal requirements.

3. Nothing in this paragraph exempts state or local governments from maintaining records of federal financial assistance or from providing access to such records to federal Agencies, as provided for in federal law or in Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations."
 4. A copy of the audit report must be submitted to CMAP within 30 days after completion of the audit, but no later than one year after the end of the Contractor's fiscal year.
- H. **Drug Free Workplace.** The Contractor certifies that it will comply with the requirements of the federal Drug Free Workplace Act, 41 U.S.C. 702 as amended, and 49 CFR 32.
- I. **Disadvantaged Business Enterprise Assurance.** In accordance with 49 CFR 26.13(a), as amended, the Contractor assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26, as amended. The Contractor assures that it shall take all necessary and reasonable steps set forth in 49 CFR Part 26, as amended, to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Contractor's DBE program, as required by 49 CFR Part 26, as amended, will be incorporated by reference and made a part of this Agreement for any Federal assistance awarded by FTA or U.S. DOT. Implementation of this DBE program is a legal obligation of the Contractor, and failure to carry out its terms shall be treated as a violation of the Agreement. Upon notification by the Federal Government or CMAP to the Contractor of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR Part 26, as amended, and may in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, as amended, and/or the Program Fraud Remedies Act, 31 U.S.C. 3801 *et seq.*, as amended.
- J. **Assurance of Nondiscrimination on the Basis of Disability.** As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Contractor assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Contractor assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.
- K. **Procurement Compliance Certification.** The Contractor certifies that its procurements and procurement system will comply with all applicable third party procurement requirements of Federal laws, executive orders, regulations, and FTA directives, and requirements, as amended and revised, as well as other requirements FTA may issue including FTA Circular 4220.1F, "Third Party Contracting Guidance," and any revisions thereto, to the extent those requirements are applicable. The Contractor certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and

its contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

- L. **Intelligent Transportation Systems Program.** As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the "National ITS Architecture."

1. In accordance with Section 5307(c) of SAFETEA-LU, 23 U.S.C. 502 note, the Contractor assures it will comply with all applicable requirements of Section V (Regional ITS Architecture and Section VI (Project Implementation)) of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," at 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and other FTA requirements that may be issued in connection with any ITS project it undertakes financed with Highway Trust Funds (including funds from the mass transit account) or funds made available for the Intelligent Transportation Systems Program authorized by SAFETEA-LU, 23 U.S.C. 502 note.
2. With respect to any ITS project financed with Federal assistance derived from a source other than Highway Trust Funds (including funds from the Mass Transit Account) or SAFETEA-LU, 23 U.S.C. 502 note, the Contractor assures that it will use its best efforts to ensure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

- M. **Davis-Bacon Act.** To the extent applicable, the Contractor will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted subagreements.

- N. **Certifications and Assurances Required by the U.S. Office of Management and Budget (OMB) (SF-424B and SF-424D)**

As required by OMB, the Contractor certifies that it:

1. Has the legal authority and the institutional, managerial, and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management, and completion of the project.
2. Will give the U.S. Secretary of Transportation, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
4. Will initiate and complete the work within the applicable project time periods;
5. Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:
 - i. Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;
 - ii. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, which prohibit discrimination on the basis of sex;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

- iv. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;
 - v. The Drug Abuse, Prevention, Treatment and Rehabilitation Act, Public Law 92-255, and amendments thereto, 21 U.S.C. 1101 *et seq.* relating to nondiscrimination on the basis of drug abuse;
 - vi. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Public Law 91-616, and amendments thereto, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - vii. The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd-2 related to confidentiality of alcohol and drug abuse patient records;
 - viii. Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;
 - ix. Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited, to 49 U.S.C. 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity, and Section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and
 - x. Any other nondiscrimination statute(s) that may apply to the project.
6. Will comply with all federal environmental standards applicable to the project, including but not limited to:
- xi. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 and Executive Order 11514;
 - xii. Notification of violating facilities pursuant to Executive Order 11738;
 - xiii. Protection of wetlands pursuant to Executive Order 11990;
 - xiv. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
 - xv. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.*;
 - xvi. Conformity of federal Actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;
 - xvii. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended;
 - xviii. Protection of endangered species under the Endangered Species Act of 1973, as amended;
 - xix. The Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271 *et seq.*, which relates to protecting components or potential components of the national wild scenic rivers system.
7. Will comply with all other federal statutes applicable to the project, including but not limited to:
- xx. Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which provides for fair and equitable treatment of persons displaced whose property is acquired as a result of federal or federally-assisted programs;
 - xxi. The Hatch Act, 5 U.S.C. 1501-1508 and 7324-7328, which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds;
 - xxii. The Flood Disaster Protection Act of 1973, which requires the purchase of flood insurance in certain instances;
 - xxiii. Section 106 of the National Historic Preservation Act of 1966, as amended, 16

U.S.C. 470;

- xxiv. Executive Order 11593, which relates to identification and protection of historic properties;
 - xxv. The Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469a-1 et seq.;
 - xxvi. The Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 et seq., which relates to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by a federal award of assistance;
 - xxvii. The Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801 et seq., which relates to prohibiting the use of lead-based paint in construction or rehabilitation of residence structures;
 - xxviii. The Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- O. **Energy Conservation** To the extent applicable, the Contractor and its third party contractors at all tiers shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Section 6321 et seq.
- P. **Clean Water** For all contracts and subcontracts exceeding \$100,000, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
- Q. **Clean Air** For all contracts and subcontracts exceeding \$100,000, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq.
- R. **Eligibility For Employment In The United States** The Contractor shall complete and keep on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Forms (I-9). These forms shall be used by the Contractor to verify that persons employed by the Contractor are eligible to work in the United States.
- S. **Buy America** Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest; that such materials are not reasonably available and of satisfactory quality; or that inclusion of domestic materials will increase the cost of overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.
- T. **False Or Fraudulent Statements Or Claims** The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to CMAP in connection with this Agreement, CMAP reserves the right to impose on the Contractor the penalties of 18 U.S.C. Section 1001, 49 U.S.C. Section 5307, 31 U.S.C. Section 3801, and 49 CFR Part 31, as CMAP may deem appropriate. Contractor agrees to include this clause in all state and federal assisted contracts and subcontracts.
- U. **Changed Conditions Affecting Performance** The Contractor shall immediately notify CMAP of any change in conditions or local law, or of any other event which may significantly affect its ability to perform the Project in accordance with the provisions of this Agreement.
- V. **Third Party Disputes Or Breaches** The Contractor agrees to pursue all legal rights available to it in the enforcement or defense of any third party contract, and FTA or U.S. DOT and CMAP

reserve the right to concur in any compromise or settlement of any third party contract claim involving the Contractor. The Contractor will notify FTA or U.S. DOT and CMAP of any current or prospective major dispute pertaining to a third party contract. If the Contractor seeks to name CMAP as a party to the litigation, the Contractor agrees to inform both FTA or U.S. DOT and CMAP before doing so. CMAP retains a right to a proportionate share of any proceeds derived from any third party recovery. Unless permitted otherwise by CMAP, the Contractor will credit the Project Account with any liquidated damages recovered. Nothing herein is intended to nor shall it waive U.S. DOT's, FTA's or CMAP's immunity to suit.

- W. **Fly America** Contractor will comply with 49 U.S.C. §40118, 4 CFR §52 and U.S. GAO Guidelines B- 138942, 1981 U.S. Comp. Gen. LEXIS 2166, March 31, 1981 regarding costs of international air transportation by U.S. Flag air carriers.
- X. **Non-Waiver** The Contractor agrees that in no event shall any action or inaction on behalf of or by CMAP, including the making by CMAP of any payment under this Agreement, constitute or be construed as a waiver by CMAP of any breach by the Contractor of any terms of this Agreement or any default on the part of the Contractor which may then exist; and any action, including the making of a payment by CMAP, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to CMAP in respect to such breach or default. The remedies available to CMAP under this Agreement are cumulative and not exclusive. The waiver or exercise of any remedy shall not be construed as a waiver of any other remedy available hereunder or under general principles of law or equity.
- Y. **Preference for Recycled Products** To the extent applicable, the Contractor agrees to give preference to the purchase of recycled products for use in this Agreement pursuant to the various U.S. Environmental Protection Agency (EPA) guidelines, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962.
- Z. **Cargo Preference - Use of United States Flag Vessels.** The Contractor agrees to comply with 46 U.S.C. § 55305 and 46 CFR Part 381 and to insert the substance of those regulations in all applicable subcontracts issued pursuant to this Agreement, to the extent those regulations apply to this Agreement.
- AA. **Central Contractor Registration -** Contractor is required to register with the Central Contractor Registration (CCR), which is a web-enabled government-wide application that collects, validates, stores and disseminates business information about the federal government's trading partners in support of the contract award, grants and the electronic payment processes. If the Contractor does not have a CCR number, the Contractor must register at <https://www.bpn.gov/ccr>

As a sub-recipient of federal funds equal to or greater than \$25,000 (or which equals or exceeds that amount by addition of subsequent funds), this agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

All of the requirements listed in **Federally Funded Agreements**, paragraphs A through AA apply to the federally funded project. The Contractor agrees to include these requirements in each contract and subcontract financed in whole or in part with federal assistance.

**Federally Funded Agreements for Illinois Environmental Protection Agency
Conditions/Certifications Section 319(h) Financial Assistance Agreements**

SECTION 6: Special Provisions

1. Option to Renew Contract. In consideration of the contract, the Contractor hereby grants to CMAP the options to extend the service provided by the Contractor under the contract for up to three (3) one-year periods. The option for each year may be exercised separately in writing at any time on or before sixty (60) calendar days prior to expiration of the contract period awarded to that time. Compensation related to each option year shall be included in the original contract.

Prior to exercising an option, CMAP shall serve notice to the Contractor of its intention to extend the contract into and through an additional one-year period. Such notice shall not be deemed to commit CMAP to such extension, nor shall it be binding upon the Contractor if postmarked less than sixty (60) days prior to the expiration of the current contract period.

It shall be mutually understood and agreed that all work performed and services provided under any exercised option shall be in strict compliance with all requirements of the contract, as amended.

Additionally, it shall be mutually understood and agreed that: 1) CMAP is under no obligation to exercise the option(s); 2) No representations have been made by CMAP committing it to exercise the option(s); and 3) CMAP may procure such option requirements elsewhere. Such option(s) may be exercised by modification of the contract, letter notification or by issuance of a new contract.

2. Workers' Compensation. The State of Illinois Worker's Compensation Code requires the securing of workers' compensation by all non-state employers. The Submitter shall attest to understanding and complying with the State of Illinois Workers' Compensation Code requirement and submit a completed "Certificate Regarding Workers' Compensation Insurance," Attachment 1 to the RFQ. In addition, the Submitter shall provide and maintain a waiver of subrogation endorsement.

Attachment 1: Certificate Regarding Workers' Compensation Insurance

Certificate Regarding Workers' Compensation Insurance

In conformance with current statutory requirements of Section 820 ILCS 305/1 et. seq., of the Illinois Labor Code, the undersigned certifies as follows:

“I am aware of the provisions of Section 820 ILCS 305/1 of the Labor Code which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of the work of this contract.”

Bidder/Contactor _____

Signature _____

Name and Title _____

Date _____

Attachment 2: Information to be provided by Bidder

The Bidder is required to supply the following information (if necessary, attach additional sheets):

Firm Name: _____ Contact Person: _____

Business Address:

 Telephone: (____) _____ FAX: (____) _____ E-mail: _____

Years of Experience: _____

Type of Firm – Sole Proprietor, Partnership, Corporation, JointVenture, Etc.: _____

Organized under the laws of state of: _____

Business License No.: _____ Business License Expiration Date: _____

List names and addresses of owners of the firm or names and titles of officers of the corporation:

Client list of services rendered currently and/or in the recent past:

<u>Type of Service/Product</u>	<u>Date Completed</u>	<u>Name and Address of Client</u>	<u>Contact Name and Phone Number</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Credit References (Include contact person's name, address, and telephone number for at least three references, one of which must be the Bidder's bank):

- a. _____

- b. _____

- c. _____

Bidder hereby certifies that it (check one): _____ IS _____ IS NOT an eligible Disadvantaged Business Enterprise (DBE) as defined Sec. III, provision 31g1). If "IS" is checked, attach copy of document that certifies Bidder's status as a DBE.

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 July 20, 2010, are acceptable and true. A summary of the organization certifications and grant conditions can be found on pages 3 through 17 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

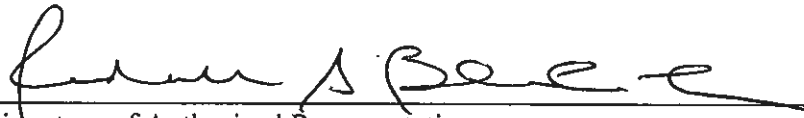
List of Organization Certifications:

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. Liability of the Illinois EPA
- 31. Disputes
- 32. Amendments
- 33. Termination
- 34. Payments

I, the undersigned, being duly authorized to take such actions, have: (i) reviewed the Organization Certifications and Grant Conditions for Clean Water Act Section 319(h) Financial Assistance Agreements; (ii) retained a copy of the Illinois Environmental Protection Agency's ("Illinois EPA") Organization Certifications and Grant Conditions; and (iii) certify that items 1 through 34 of the Illinois EPA's Organization Certifications and Grant Conditions are acceptable and true.



Signature of Authorized Representative

Randall S. BLANKENHORN

Printed Name

EXECUTIVE DIRECTOR

Title

Signed by (if other than Authorized Representative)

Printed Name

Title

5/15/12
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.

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:

- a. to the extent the records pertain directly to financial assistance agreement performance;

- b. if there is any indication that fraud, gross abuse, or corrupt practices may be involved;
and
- c. 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. 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.

31. 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.

32. 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.

33. 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.

34. 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.