**Section 871.APPENDIX A Required Provisions − Professional Contractor Agreements**

1. General

a) The grantee and the contractor agree that the following provisions shall apply to the work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.

b) This agreement is funded in part by a grant from the Illinois Environmental Protection Agency (Agency). Neither the State of Illinois nor the Agency is a party to this agreement.

2. Responsibility of the Contractor

a) The contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in designs, drawings, specifications, reports and other services.

b) The contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and 35 Ill. Adm. Code 871.

c) Approval by the grantee or Agency of drawings, designs, specifications, reports, and incidental consulting work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of the work. Neither the grantee's nor Agency's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the contractor shall be and remain liable in accordance with applicable law for all damages to the grantee or Agency caused by the contractor's negligent performance of any of the services furnished under this agreement.

d) The rights and remedies of the grantee provided for under this agreement are in addition to any other rights and remedies provided by law.

3. Scope of Work

Except as may be otherwise specifically limited in this agreement, the services to be rendered by the contractor shall include all services required to complete the task or step in accordance with 35 Ill. Adm. Code 871.

4. Changes

a) The grantee may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the contractor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change unless the grantee grants a further period of time before the date of final payment under this agreement.

b) If additional compensation will be charged by the contractor for its services, prior written authorization must be obtained from the grantee.

5. Termination

a) This agreement may be terminated in whole or in part in writing by either party in the event of failure 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 effected unless the other party is given: (1) not less than ten (10) days' written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination.

b) If termination for default is effected by the grantee, an equitable adjustment in the price provided for in this agreement shall be made, but: (1) no amount shall be allowed for anticipated profit on unperformed services or other work; and (2) any payment due to the contractor at the time of termination shall be adjusted to reflect any additional costs occasioned to the grantee by reason of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the grantee, the equitable adjustment shall include a reasonable profit, as defined in Section 871.301(d) of this Part, for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which are contractually obligated prior to the termination.

c) Upon receipt of the termination action pursuant to paragraphs (a) or (b) of this clause, the contractor shall: (1) promptly discontinue all services affected (unless the notice directs otherwise); and (2) deliver or otherwise make available to the grantee 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.

d) Upon termination pursuant to paragraphs (a) or (b) of this clause, the grantee may take over the work and prosecute the same to completion by agreement with another party or otherwise.

e) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the grantee. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (b) of this clause.

f) The rights and remedies of the grantee and the contractor provided in this clause are in addition to any other rights and remedies provided by law or under this agreement.

6. Remedies

a) Except as may be otherwise provided in this agreement, or as the parties hereto may otherwise agree, all claims, counterclaims, disputes and other matters in question between the grantee and the contractor arising out of or relating to this agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, subject to the limitations stated in paragraphs (c) and (d) of this clause. This agreement, and any other agreement or consent to arbitrate entered into in accordance therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.

b) Notice of demand for arbitration must be filed in writing with the other party to this Agreement, with the Agency, and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

c) All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than $200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than $200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than $200,000 (exclusive of interest and costs).

d) No arbitration arising out of, or relating to, this agreement may include, by consolidation, joinder or in any other manner, any additional party not a party to this agreement.

e) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (c) and (d) of this clause may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds $200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

f) The award rendered by the arbitrators will be final, not subject to appeal, and judgment may be entered upon it in any court having jurisdiction thereof.

7. Payment

a) The contractor shall submit payment requests to the grantee in accordance with the schedule in the project scope of work. Such requests shall be based upon the value of the work and services performed by the contractor under this agreement, and shall be prepared by the contractor and supplemented or accompanied by such supporting data as may be required by the grantee or the Agency. The contractor shall also submit progress reports to the grantee on forms prescribed and provided by the Agency in accordance with the schedule in the project scope of work. These reports shall document work completed and costs incurred during the reporting period and to date.

b) Upon approval of such payment request by the grantee, payment shall be made to the contractor as soon as practicable of ninety percent of the amount as determined above..

c) Upon satisfactory completion by the contractor of the work called for under the terms of this agreement, and upon acceptance of such work by the grantee, the contractor will be paid the unpaid balance of any money due for such work, including the retained percentages relating to this portion of the work.

d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior to settlement upon termination of the agreement, and as a condition precedent thereto, the contractor shall execute and deliver to the grantee a release of all claims against the grantee arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the contractor from the operation of the release in stated amounts to be set forth therein.

8. Audit and Access to Records

a) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on Agency grant work under this agreement in accordance with generally accepted accounting principles and in accordance with Sections 871.501 and 871.502 of this Part. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required pursuant to this Part for subagreements over $100,000 and a copy of the grant cost summary submitted to the grantee. The Agency or any of its duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The contractor will provide proper facilities for such access and inspection.

b) The contractor agrees to include paragraphs (a) through (e) of this clause in all contracts and all tier subcontracts directly related to project performance which are in excess of $10,000.

c) Audits conducted pursuant to this provision shall be in accordance with the American Institute of Certified Public Accountants' Professional Standards.

d) The contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) of this clause, to the Agency. Where the audit concerns the contractor, the auditing agency will afford the contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

e) Records under paragraphs (a) and (b) of this clause shall be maintained and made available during performance on Agency grant work under this agreement and until three years from date of final Agency grant payment for the project. In addition, those records that relate to any "dispute" appeal under an Agency grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

9. Price Reduction for Defective Cost or Pricing Data for Agreements Exceeding $100,000

a) If the Agency determines that any price, including profit negotiated in connection with this agreement or any cost reimbursable under this agreement was increased because the contractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or profit shall be reduced accordingly, and the agreement shall be modified in writing to reflect such reduction.

b) Failure to agree on a reduction shall be subject to the "Remedies" clause of 35 Ill. Adm. Code 871.Appendix A(6) of this Part.

(Note: Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. It is also expected that any contractor subject to such indemnification will generally require substantially similar identification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

10. Subcontractors

a) Any subcontractors and outside associates or consultants hired 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, or as are specifically approved by the grantee during the performance of this agreement. Any substitution of subcontractors, associates, or consultants will be subject to the prior written approval of the Agency and the grantee.

b) Except as otherwise provided in this agreement, the contractor may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the grantee.

11. Equal Employment Opportunity

The contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

12. Covenant Against Contingent Fees

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees. For breach or violation of this warranty the grantee shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission percentage or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. Gratuities

a) The grantee may, by written notice to the contractor, terminate the right of the contractor to proceed under this agreement if it is found, after notice and hearing, by the grantee that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any official or employee of the grantee or of the Agency with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this agreement, provided that the existence of the facts upon which the grantee makes such findings shall be in issue and may be reviewed in proceedings pursuant to clause 6 (Remedies) of this agreement.

b) In the event this agreement is terminated as provided in paragraph (a) of this clause, the grantee shall be entitled: (1) to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor; and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the grantee) which shall be not less than three nor more than ten times the costs incurred by the contractor in providing any such gratuities to any such officer or employee.

c) The rights and remedies of the grantee provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this agreement.

14. Conflict of Interest

Contractor, by signing this agreement, covenants that contractor has no public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of contractor's services and obligations under this agreement. Any such conflict shall be disclosed to the grantee and the grantee shall determine whether such conflict is cause for the non-execution or termination of this agreement. Contractor further covenants that, in the performance of this agreement, no person having such interest shall be employed by contractor.

15. Americans with Disabilities Act

Contractor certifies that it shall comply with the provisions of the Americans with Disabilities Act (42 USC Section 12101 et seq.) as it may apply to the services, programs or activities that are to be provided under this agreement.

(Source: Amended at 19 Ill. Reg. 11871, effective August 3, 1995)