**Section 360.APPENDIX C Required Provisions − Consulting Engineering Agreements (Applicable To Consulting Engineering Agreements Entered Into After July 1, 1976)**

1. General

(a) The grantee and the engineer 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. Neither the State of Illinois nor the Illinois Environmental Protection Agency (hereinafter Agency) is a party to this agreement.

2. Responsibility of the Engineer

(a) The engineer 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 engineer under this agreement. The engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, reports and other services.

(b) The engineer 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 applicable Agency requirements.

(c) Approval by the grantee or Agency of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the engineer 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 engineer shall be and remain liable in accordance with applicable law for all damages to the grantee or Agency caused by the engineer'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 engineer shall include all services required to complete the task or step in accordance with applicable Agency regulations.

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 engineer'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 engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the engineer of the notification of change unless the grantee grants a further period of time before the date of final payment under this agreement.

(b) No services for which an additional compensation will be charged by the engineer shall be furnished without the written authorization of the grantee.

5. Termination

(a) This agreement may be terminated in whole or in part in writing 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; 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) and opportunity for consultation with the terminating party prior to termination.

(b) This agreement may be terminated in whole or in part in writing by the grantee for its convenience: Provided, That no such termination may be effected unless the engineer 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.

(c) 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 engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the grantee by reason of the engineer's default. If termination for default is effected by the engineer, or if termination for convenience is effected by the grantee, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the engineer for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the engineer relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the engineer 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 engineer in performing this agreement, whether completed or in process.

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

(f) If, after termination for failure of the engineer to fulfill contractual obligations, it is determined that the engineer 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 (c) of this clause.

(g) The rights and remedies of the grantee and the engineer 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 engineer 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 then obtaining, subject to the limitations stated in paragraphs (c) and (d) below. 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 if 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) above 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 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 judgement may be entered upon it in any court having jurisdiction thereof.

7. Payment

(a) The engineer may submit payment requests. Such requests shall be based upon the value of the work and services performed by the engineer under this agreement, and shall be prepared by the engineer and supplemented or accompanied by such supporting data as may be required by the grantee.

(b) Upon approval of such payment request by the grantee, payment upon properly certified vouchers shall be made to the engineer as soon as practicable of ninety percent of the amount as determined above: Provided, however, that if the grantee determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the grantee, he may at his discretion release to the engineer such excess amount.

(c) Upon satisfactory completion by the engineer of the work called for under the terms of this agreement, and upon acceptance of such work by the grantee, the engineer 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 settlement upon termination of the agreement, and as a condition precedent thereto, the engineer 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 engineer from the operation of the release in stated amounts to be set forth therein.

8. Project Design.

(a) In the performance of this agreement, the engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods and processes consistent with paragraphs (C), Competition, and (I) Specifications, of General Condition 21, General conditions for all subagreements, hereof.

(b) The engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the engineer to be available only from a sole source, unless such use has been adequately justified in writing by the engineer as necessary for the minimum needs of the project.

(c) The engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of General Condition 21(I)(1), Nonrestrictive specifications. The aforementioned General Condition requires that no specification for bids or statement of work may be written in such a manner as to contain proprietary, exclusionary or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brands names or trade of comparable quality and utility are listed and are followed by the words "or equal".

(d) The engineer shall report to the grantee any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

9. Audit; access to records.

(a) The engineer shall maintain books, records, documents and other evidence directly pertinent to performance on Agency grant work under this agreement in accordance with accepted professional practice, appropriate accounting procedures and practices, and General Conditions 3, Access, and 4, Audit and Records, hereof. The engineer shall also maintain the financial information and data used by the engineer in the preparation or support of the cost submission required pursuant to General Condition 23(H)(2) for subagreements over $100,000 and a copy of the 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 engineer will provide proper facilities for such access and inspection.

(b) The engineer agrees to include paragraphs (a) through (e) of this clause in all his 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 generally accepted auditing standards and established procedures and guidelines for the reviewing or audit agency(ies).

(d) The engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above. Where the audit concerns the engineer, the auditing agency will afford the engineer 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) above 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 which 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.

10. Price reduction for defective cost or pricing data. (The provisions of this clause are required by the Agency only if the amount of this agreement exceeds $100,000. The grantee may elect to utilize this clause if the contract amount is $100,000 or less.)

(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 by any significant sums because the engineer or any subcontractor 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 or 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 this agreement.

 (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 engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

11. Subcontractors

(a) Any subcontractors and outside associates or consultants required by the engineer 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 in such subcontractors, associates, or consultants will be subject to the prior approval of the grantee.

(b) Except as otherwise provided in this agreement, the engineer 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.

12. Equal employment opportunity. In accordance with the Agency policy as expressed in General Condition 25, the engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

13. Covenant against contingent fees. The engineer 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, excepting bonafide 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, brokerage, or contingent fee.

14. Gratuities

(a) The grantee may, by written notice to the engineer, terminate the right of the engineer 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 engineer, or any agent or representative of the engineer, 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) hereof, the grantee shall be entitled (1) to pursue the same remedies against the engineer as it could pursue in the event of a breach of the contract by the engineer, 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 engineer 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.