



40 years and moving forward

John R. Kasich, Governor

Mary Taylor, Lt. Governor

Scott J. Nally, Director

June 17, 2013

Jeff Feltz
City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230

Dear Mr. Feltz:

Re: 13(h)EPA-19, "Sycamore Run Stream Restoration"

Congratulations on your Section 319(h) Nonpoint Source Implementation grant. Enclosed please find three copies of the Grant Agreement which need to be executed between your organization and Ohio EPA prior to your grant becoming effective.

Please review the Grant Agreement carefully, including the attached budget and list of deliverables. We encourage both you and your fiscal agent to become familiar with the Agreement since it forms the basis for Ohio EPA's commitment to you, as well as your commitments to Ohio EPA.

Following your review of the Grant Agreement, please have the authorized official sign and date all three copies (preferably in blue ink), then return them to Martha Spurbeck, Nonpoint Source Program, Ohio EPA/DSW, P.O. Box 1049, Columbus, Ohio 43216-1049, along with the following documents: (1) A copy of the code of standards of conduct for your organization; (2) a copy of the contract/procurement procedures and policies for your organization; (3) a copy of the travel policy for your organization; and (4) if applicable, original signed copies of the local match commitment form(s). Once the Grant Agreements are signed by the director of Ohio EPA, one fully executed copy will be returned to you.

The first payment can be processed after the Grant Agreement is fully executed by all parties and when you have submitted a statement that you are ready to begin work requiring the expenditure of grant funds. Please be sure to reference project 13(h)EPA-19 in any submission to Ohio EPA.

Should you have any questions, please contact Martha Spurbeck at (614) 644-2869 or via email at martha.spurbeck@epa.state.oh.us. Again, congratulations and we look forward to working with you to improve Ohio's water quality.

Sincerely,

A handwritten signature in black ink, appearing to read "George Elmaraghy, P.E." with a date "6/17/13" written above it.

George Elmaraghy, P.E., Chief
Division of Surface Water

Enclosures



FY 2013 Section 319(h) Nonpoint Source Award Summary

CFDA Title & Number	Nonpoint Source Implementation, 66.460
Award Name & Number	C9975500013 CWA Section 319(h) Nonpoint Source Implementation Program
Project Title	Sycamore Run Stream Restoration
Project Number	13(h)EPA-19
Project Start Date	July 1, 2013
Project Closure Date	June 30, 2016
SubGrantee	City of Gahanna 200 South Hamilton Road Gahanna, Ohio 43230
Grantee Identification #	31-6400492
Project Representative	Jeff Feltz City of Gahanna 200 South Hamilton Road Gahanna, Ohio 43230 614-342-4005 jeff.feltz@gahanna.gov
Grantor	Ohio Environmental Protection Agency P.O. Box 1049 Columbus, Ohio 43216-1049
Grant Coordinator	Martha Spurbeck Division of Surface Water Ohio Environmental Protection Agency P.O. Box 1049 Columbus, Ohio 43216-1049 (614) 644-2869
Total Project Cost	\$338,195
Federal Amount	\$202,917
Local Match	\$135,278
Project Location	Franklin County
Watershed/HUC	Rocky Fork, 05060001140120

**OHIO ENVIRONMENTAL PROTECTION AGENCY
CLEAN WATER ACT SECTION 319
GRANT AGREEMENT**

PREAMBLE

This Grant Agreement ("Agreement") is made by and between the Director of Environmental Protection ("Director"), on behalf of the Ohio Environmental Protection Agency ("Ohio EPA"), and the Subgrantee identified in the Clean Water Act, Section 319(h), Nonpoint Source Award Summary, ("Award Summary"), and Subgrantee's agents, successors and assigns. The Award Summary is affixed in front of this Agreement and incorporated herein by reference as if fully rewritten. This Agreement establishes the duties and obligations of Ohio EPA and Subgrantee (with Ohio EPA and Subgrantee together referred to as "the parties" or individually as "party").

In consideration of the mutual covenants and stipulations set forth in this Agreement, Ohio EPA and Subgrantee agree as follows:

**ARTICLE I
Designees / Communications**

1. **(Project Representative)** Subgrantee shall coordinate all work with Ohio EPA through Subgrantee's designee, who shall be known as the "Project Representative," who shall have the authority to represent Subgrantee in the performance of its duties and obligations under this Agreement. The initial Project Representative shall be the person identified as such in the Award Summary. Subgrantee may designate different Project Representatives throughout the term of this Agreement by providing written notification to the Grant Coordinator.
2. **(Grant Coordinator)** Ohio EPA shall coordinate all work with Subgrantee through the Director or the Director's designee, which designee shall be known as the "Grant Coordinator," who shall have the authority described herein. Any questions or disputes regarding the duties and obligations of the Subgrantee shall be resolved by the Director or the Grant Coordinator. The initial Grant Coordinator shall be the person identified as such in the Award Summary. The Director, through the Division of Surface Water, may designate a different Grant Coordinator throughout the term of this Agreement by providing written notification to the Project Representative.

3. (Communications)

- a. Except as provided elsewhere in this Agreement, all notices, requests, submittals, consents or other communications shall be in writing and shall be hand-delivered or mailed first class, postage pre-paid, to the Project Representative or Grant Coordinator. Notwithstanding the above, the Grant Coordinator may require that any such notices, requests, submittals, consents, or other communications also be provided by electronic mail or storage media, as such is compatible with that used by Ohio EPA.
- b. All notices, requests, submittals, consents or other communications shall be effective upon the date of receipt by the person to whom such notice, request, submittal, consent or other communications are addressed. Either party may change the person

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to whom and/or the address at which, notices, requests, submittals, consents, or other communications are to be delivered by providing written notice of such new person and/or such new address to the Grant Coordinator or Project Representative.

ARTICLE II
Effective and Project Closure Dates/Scope of Work
Documents / Publications

4. (Effective and Project Closure Dates) This Agreement is effective and binding upon the parties on the date when the last required signature is affixed hereto. The project, as identified in Appendix A, Appendix B and as generally described in the attached portions of the grant application (which is also known as the Project Work Plan), which aforementioned documents are attached hereto and incorporated herein by reference as if fully rewritten, shall be completed on or before the Project Closure Date identified in the Award Summary. Notwithstanding said Project Closure Date, the last quarterly fiscal and semi annual technical reports shall be submitted by the date set forth in Paragraph 21 of this Agreement; responses pursuant to evaluations shall be submitted within the time established by Paragraph 24 of this Agreement; and the Closing Reports shall be submitted by the date set forth in Paragraph 25 of this Agreement. The Project Closure Date shall not be extended except upon written, signed consent by the Project Representative and the Grant Coordinator. Any such written signed consent shall occur before the Project Closure Date. Ohio EPA shall have no responsibility to provide financial assistance to the Subgrantee for project work performed outside of the terms of this Agreement.

5. (Scope of Work) Subgrantee is responsible for ensuring the performance of and/or compliance with, its duties and obligations arising under this Agreement. Subgrantee shall successfully perform and complete the work, activities, and requirements set forth in this Agreement, Appendix A, Appendix B and as generally described in the attached portions of the grant application.

6. (Documents Property of Ohio EPA) Subgrantee shall, at the written request of the Grant Coordinator, provide to Ohio EPA three copies of any documents, information, photographs, software and all other materials and property prepared, developed, created or discovered by Subgrantee under or related to this Agreement, whether grant or non- federal match monies were expended in whole or in part.

7. (Publications)

- a. The federal government and Ohio EPA reserve a royalty-free, nonexclusive, and irrevocable license and unrestricted right to reproduce, document, publish, disclose or otherwise use, and to authorize others to use, in whole or in part, for State and federal purposes: i) the copyright in any work developed under this Agreement; and ii) any right of copyright to which Subgrantee purchases ownership with grant monies.

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b. All products published under this Agreement, whether funded by federal grant or non-federal match monies (including, but not necessarily limited to, fact sheets, brochures, newsletters, newspaper articles and/or advertisements, signs, watershed management plans, quality assurance project plans, home sewage treatment system plans, design reports, project reports, etc.) shall provide acknowledgment to Ohio EPA and U.S. EPA as follows:

This product or publication was financed in part or totally through a grant from the State of Ohio Environmental Protection Agency and the United States Environmental Protection Agency, under the provisions of Section 319(h) of the Clean Water Act. The contents and views, including any opinions, findings, or conclusions or recommendations, contained in this product or publication are those of the authors and have not been subject to any State of Ohio Environmental Protection Agency or United States Environmental Protection Agency peer or administrative review and may not necessarily reflect the views of either Agency, and no official endorsement should be inferred.

c. Subgrantee shall submit any product/publication (other than project newsletters) to the Grant Coordinator, at least thirty (30) days prior to the anticipated publication/distribution date.

ARTICLE III

Award Amount / Payments / Unspent Grant Monies / Expenditures of Grant Monies

8. **(Award Amount)** Pursuant to the terms of this Agreement, Ohio EPA hereby awards a Clean Water Act, Section 319(h), Nonpoint Source Grant, ("grant"), in the amount identified in the Award Summary, to Subgrantee, which amount shall constitute the sole and exclusive consideration offered or furnished by Ohio EPA for the performance of duties and obligations by Subgrantee. Ohio EPA shall make no payments on behalf of Subgrantee into any fringe benefit program, medical insurance plan, worker's compensation fund or unemployment compensation fund available to employees of Subgrantee. Ohio EPA is hereby released from any and all liability for injury received by Subgrantee, its employees, agents, or subcontractors while performing tasks, duties and obligations set forth in this Agreement.

9. **(Payments)**

a. The first payment shall not be made until all parties hereto have executed this Agreement, and Subgrantee has submitted a written statement to the Grant Coordinator that the Subgrantee is ready to begin work requiring the expenditure of grant monies, the total non-federal match has been secured, and a payment request form with authorized signature has been submitted to the Grant Coordinator. Each succeeding payment shall not be made until the Grant Coordinator determines that the Subgrantee has demonstrated satisfactory fiscal and technical performance in

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compliance with this Agreement, as demonstrated by the quarterly fiscal and semi-annual technical reports required under this Agreement, and upon submittal of the payment request form with authorized signature. The last ten percent (10%) of the total federal portion of the grant award shall only be reimbursed to the Subgrantee upon satisfactory completion of the project and submission to the Grant Coordinator of approvable fiscal and technical closing reports and final payment request form, with authorized signature.

- b. The amount of any one payment request shall not exceed the sum of prior eligible expenditures to be paid on a reimbursement basis for costs incurred and properly invoiced. If, at the time of payment request is made, the Subgrantee has a cash balance from previous payments, the payment amount shall be reduced by the amount of the cash balance.
- c. A payment request is not proper if it contains a defect or impropriety. The Grant Coordinator shall notify the Subgrantee of any defect or impropriety.

9a. (Working Capital Advance Payments)

- a. Any initial request for working capital advance payment shall be submitted along with the formal acceptance of this Agreement and shall be limited to the minimum amount needed for the first ninety (90) days of the project. Subsequent requests shall be limited to payment for costs incurred and invoiced. If, at the time payment request is made, Subgrantee has a cash balance from the initial advance, the payment amount shall be reduced by the amount of the cash balance.

10. (Unspent Grant Monies) Upon expiration or termination of this Agreement, the Grant Coordinator shall invoice Subgrantee for all unspent grant monies. Within thirty (30) days after the invoice date, Subgrantee shall return all unspent grant monies awarded under this Agreement to Ohio EPA. Checks shall be marked "Fund 3F5 Unspent Grant Monies from Grant No. __", and shall be made payable to the Treasurer of the State of Ohio and mailed to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049.

11. (Program Income) Program income earned during the project period shall be reported on the quarterly fiscal reports and closing fiscal summary and shall be deducted from the project's total costs eligible for reimbursement.

12. (Match/Cost Share) Subgrantee shall provide a minimum of forty percent (40%) non-federal match monies for the project's total cost. Match can be contributed by state or local in-kind services or funds.

13. (Expenditures of Grant Monies) The expenditures of grant monies shall be pursuant to and consistent with this Agreement, Appendix A, Appendix B and as generally described in the attached portions of the grant application.

14. **(Expenditures prior to effective Date of this Agreement)** Subgrantee may, at its own risk, incur allowable costs prior to the effective date of this Agreement, but after the Project Start Date, provided that costs are pursuant to and consistent with this Agreement, Appendix A, Appendix B and as generally described in the attached portions of the grant application. Prior to the effective date of this Agreement, no prior approvals by Ohio EPA will be given. As used herein, Project Start Date means the date specified in the Award Summary. Work performed before the Project Start Date shall not be reimbursed or provided with financial assistance.

ARTICLE IV
Accounting / Records / Retention / Access / Audit

15. **(Separate Accounting)** Subgrantee shall establish and maintain separate accounting records for the management of grant monies awarded under this Agreement, consistent with generally accepted accounting practices and Ohio EPA directives.

16. **(Supporting Records)** Subgrantee shall be responsible for the expenditure of grant monies awarded under this Agreement, and for maintaining adequate supporting records and documentation for such expenditures, consistent with generally accepted accounting practices. Support records and documentation, which shall include contracts, invoices, vouchers and other data as appropriate, shall provide:

- a. An accurate, current and complete accounting of all financial transactions for the project;
- b. Identification of the source and expenditure of grant monies awarded under this Agreement;
- c. Control and accountability for all grant monies awarded under this Agreement, property and other assets and written assurance that grant monies awarded under this Agreement are used solely for the authorized purpose;
- d. A comparison of actual costs versus budgeted amounts;
- e. Procedures for determining allowable, allocable, and reasonable costs;
- f. A systematic method to resolve audit findings and recommendations; and
- g. Procedures to ensure prompt disbursement of grant monies awarded under this Agreement, upon receipt of such monies.

40 CFR Parts 30 thru 31 (Fiscal Administration) and OMB Circular A-133 contain a list of directives regarding supporting records.

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17. (Record Retention) In a manner not less stringent than 40 CFR Section 31.42, Subgrantee shall keep full and complete documentation of all fiscal accounting, and any other record or document required by this Agreement, on file for three (3) years after the Project Closure Date. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Documentation supporting fiscal accounting shall be filed in a manner allowing such documentation to be readily located.

18. (Access to Records) During the term of this Agreement and until three (3) years after the Project Closure Date or as extended pursuant to Paragraph 17 of this Agreement, Subgrantee shall provide Ohio EPA and the State of Ohio, their duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine and copy, or if requested, shall submit to Ohio EPA within two (2) weeks following written request, any books, documents, papers and records of Subgrantee involving transactions or other activities related to this Agreement. Subgrantee shall, for each subcontract, require its subSubgrantees to agree to the same provisions of Paragraphs 15 to 20, inclusive, of this Agreement.

19. (Audit) Ohio EPA (or its designee), in accordance with this Agreement, shall have the right to audit Subgrantee's financial records, and to take such other action as is necessary to verify the accuracy of those financial records.

20. (Additional Auditing Requirements) Subgrantee shall:

- a. By June 15 of each year, inform Ohio EPA in writing if Subgrantee is not required to perform a single audit, as such audit is required in OMB Circular No. A-133;
- b. Upon written request, inform Ohio EPA in writing whether the project is to be audited as a major using the risk-based approach or, if not, bear the cost of having the project audited as such;
- c. Inform Ohio EPA in writing when an audit is conducted under OMB Circular No. A-133, and submit to Ohio EPA not later than forty-five (45) days of completion of the audit, all associated documents, including but not necessarily limited to, schedules, findings and questioned costs, and management letters, and
- d. Resolve audit findings, including the preparation of a corrective action plan, and comply with any decision issued by Ohio EPA, and follow up on such findings as directed.

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ARTICLE V
Reports / Evaluations / Recipient of Fiscal Reports

21. (Quarterly Fiscal and Semi Annual Technical Reports) Subgrantee shall submit the quarterly fiscal and two (2) copies (one signed original and one electronic copy) of the semi-annual technical reports summarizing project activities before the thirtieth (30th) day following the quarter or semi annual period, respectively. Subgrantee shall use the most recent reporting format provided by Ohio EPA, which may include online computerized reporting in a program to be determined by Ohio EPA. Failure to submit reports as required will result in delayed processing of payment requests and may constitute grounds for suspension or termination of this Agreement.

22. (Maintenance of Best Management Practices) If the installation of best management practices ("BMPs") is funded under this grant, within ninety (90) days after the effective date of this Agreement the Subgrantee shall provide the Grant Coordinator with written documentation of:

- a. The anticipated useful life period, in terms of years, of the BMPs implemented pursuant to this Agreement; and
- b. Assurances that said BMPs will remain in place and be maintained throughout the identified anticipated useful life period.

Failure to provide the above BMP documentation within the prescribed period may result in delayed processing of payment requests. BMP installation costs incurred prior to submittal of the above documentation may be ineligible, within the sole discretion of the Grant Coordinator, for reimbursement under this Agreement.

23. (Workshops) Subgrantee shall attend all Ohio EPA 319 workshops scheduled after the Project Start Date. Scheduled workshop dates will be forwarded to the Project Representative by Ohio EPA.

24. (Evaluations) The progress of the project may be evaluated from time to time by the Grant Coordinator, whose goal is to ensure that progress achieved by the project is consistent with the goals, objectives and schedules of activities set forth in this Agreement, Appendix A, Appendix B and as generally described in the attached portions of the grant application. After any such evaluation, the Grant Coordinator may transmit to the Subgrantee a written evaluation report and may require responses from Subgrantee. If responses are required, Subgrantee shall respond in writing within thirty (30) days of its receipt of said evaluation report. Failure to respond within thirty (30) days may result in delayed processing of payment requests.

25. (Closing Reports) Closing fiscal summary and technical reports (together referred to as "Closing Reports") shall describe all fiscal activities and all technical activities and accomplishments covering the term of this Agreement. The Closing Reports shall integrate

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and add to all previously submitted fiscal and technical reports. Closing Reports shall use the most recent reporting format provided by Ohio EPA and shall be submitted within forty-five (45) days after the Project Closure Date or ninety (90) days before the end of the Federal grant period, whichever occurs earlier.

26. (Submittal of Reports) Notwithstanding any other conditions of this Agreement, all fiscal, technical and closing reports required under this Agreement shall be submitted to:

CWA 319 Grants Administrator
Ohio EPA Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

ARTICLE VI
Suspension / Termination Activities

27. (Suspension / Termination by Director) The Director, by providing written notice to Subgrantee, may immediately suspend or terminate this Agreement and any obligations incidental thereto, in whole or in part, and/or require total or partial refund of grant monies awarded under this Agreement, including interest which may have accrued on such grant monies, if in the Director's judgment: a) Subgrantee failed to satisfactorily perform any duty or obligation required by this Agreement; b) Subgrantee has not shown the ability to perform in a satisfactory manner in the future; c) Subgrantee has not complied with federal or state laws or regulations; d) the effective performance of this Agreement is substantially endangered; e) there is an unavailability of funds from Ohio EPA's funding source, whether an appropriation or otherwise; or f) upon other just cause.

28. (Cessation of Activities) Subgrantee, upon receipt of notice to suspend or terminate this Agreement, shall immediately cease all work under this Agreement, including work undertaken by subSubgrantees, shall take all necessary and appropriate measures to cease the incurring of debts, and shall, within thirty (30) days of receipt of such suspension or termination notice, submit a written report identifying and detailing the work performed to that date, accomplishments, evaluation of Project Work Plan activities, and such other matters as may be required by the Director.

29. (Mutual Termination) Upon mutual written, signed consent of all parties, this Agreement may be terminated, in whole or in part, pursuant to the provisions of said mutual consent. Subgrantee shall submit a request for payment which shall be reviewed pursuant to this Agreement.

30. (Legal and Equitable Remedies.) The Director reserves the right to seek any and all other available legal and equitable remedies.

ARTICLE VII
General Provisions

31. (Quality Assurance Project Plan) If monitoring and environmental analysis activities are funded under this grant, Subgrantee shall submit a Quality Assurance Project Plan ("QAPP") to the Grant Coordinator in accordance with 40 CFR Section 31.45 within ninety (90) days after the effective date of this Agreement unless an extension request has been submitted by the Subgrantee and approved by the Grant Coordinator. Failure to provide a QAPP within the prescribed period may result in delayed processing of payment requests. Monitoring and analysis activities commenced under this Agreement prior to the submittal and approval of the QAPP by the Grant Coordinator may be ineligible for reimbursement.

32. (Supersedence/Modification) This Agreement is the complete agreement between the parties and supersedes all other agreements, oral or written, between the parties with respect to the subject matter herein. Except as otherwise specified in this Agreement, this Agreement, including, but not limited to, the Project Work Plan, may not be modified, amended or supplemented, or rights herein waived, except upon written, signed consent by the parties to this Agreement, provided that any such modification, amendment, supplementation or waiver shall comply with and be subject to any statutory or regulatory requirements placed upon Ohio EPA's authority to enter into agreements. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

33. (Certification of Funds) To the extent that this Agreement involves the expenditure of money chargeable to an appropriation, this Agreement and the financial obligations of Ohio EPA hereunder are subject to ORC § 126.07, which provides that contracts (agreements) involving such expenditures are not valid and enforceable unless the director of budget and management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations. The expenditure of funds pursuant to this Agreement is further contingent upon the approval by the Controlling Board, if such approval is required by ORC §127.16.

34. (Biennium Limitations) This Agreement shall expire no later than the last day of the fiscal biennium for which funds have been appropriated to Ohio EPA by the Ohio General Assembly for this project. Unless terminated pursuant to paragraphs 27 or 29 of this Agreement, this Agreement shall be renewed in each succeeding fiscal biennium in which any balance of sums payable by Ohio EPA under this Agreement remains unpaid, provided that both an appropriation of unpaid funds and the certification required by Ohio Revised Code ("ORC") § 126.07 are made, and provided further that the term of the payments shall not extend beyond the Project Closure Date, unless Ohio EPA and the Subgrantee agree in writing to payments beyond the Project Closure Date.

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35. **(Non-assignability)** All of the provisions of this Agreement shall inure to the benefit of and be binding upon, the parties hereto and their respective agents, successors, and assigns; provided, however, neither party may assign any of its respective duties, rights and obligations hereunder, in whole or in part, without the prior written, signed consent of the other. No assignment, if any, shall operate to release Subgrantee from its liability for the performance of its duties and obligations under this Agreement.

35a. **(Binding of subSubgrantees)** Subgrantee shall bind its subSubgrantees to the terms and conditions of this Agreement, so far as applicable to the work of the subSubgrantee, and shall not agree to any provision which seeks to bind Ohio EPA to terms inconsistent with, or at variance from, this Agreement.

36. **(Subcontract)** For subcontracts which total more than ten thousand dollars (\$10,000) per subSubgrantee, Subgrantee shall not subcontract its duties and obligations hereunder without the prior written, signed consent of the Grant Coordinator.

37. **(Governing Law)** This Agreement and any claims arising out of this Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of the State of Ohio shall be deemed void and of no effect. Subgrantee hereby irrevocably consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

38. **(Severability)** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

39. **(Subgrantee Liability)** Unless b. is checked, Paragraph a. is applicable.

- a. Subgrantee is performing its duties and obligations under this Agreement as an independent contractor and is not an agent or employee of Ohio EPA or the State of Ohio. Subgrantee agrees to indemnify, save and hold the State of Ohio and Ohio EPA harmless and immune from any and all claims for injuries or damages resulting from or arising out of any negligent or wrongful act or omission of Subgrantee or Subgrantee's employees, subSubgrantees, subcontractors, agents or representatives in the performance of the duties and obligations of this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks. Subgrantee agrees to defend against any claims if called upon by the State of Ohio to do so and Subgrantee shall bear all costs associated with such defense.

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(The language below is for use in agreements with state institutions or agencies and departments, such as The Ohio State University and Ohio Department of Natural Resources.)

[] b. Subgrantee is performing its duties and obligations under this Agreement as an independent contractor and is not an agent or employee of Ohio EPA. It is understood and agreed that neither party to this Agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law. Each party to this Agreement shall seek its own legal representative and bear its own cost, including judgments, in any litigation that may arise from the performance of this Agreement.

40. (Ohio EPA Liability Limited) Ohio EPA's liability to Subgrantee for damages, whether in contract or in tort, shall not exceed the total amount of grant monies awarded under this Agreement or the amount of direct damages incurred by Subgrantee, whichever is less. Subgrantee's sole and exclusive remedies for Ohio EPA's, an Ohio EPA employee's, or the State's failure to perform under this Agreement shall be as set forth in this paragraph. In no event shall Ohio EPA, any Ohio EPA employee, or the State of Ohio be liable to Subgrantee for any indirect or consequential incidental, special or punitive damages, including, but not limited to, loss of profits, even if the State, Ohio EPA, or Ohio EPA employees had been advised or knew or should have known of the possibility of such damages. Notwithstanding any language to the contrary, Subgrantee shall be liable for any personal injury or damage to real property or tangible personal property, caused by its or its agents, successor's or assign's fault or negligence.

41. (Hiring Responsibility) Subgrantee shall be solely responsible for the hiring of all its employee(s), subsubgrantee(s), agent(s), and representative(s). Subgrantee states, ensures, and warrants that all personnel involved in the performance of this Agreement shall be properly qualified, trained, competent, and experienced to perform its duties and obligations required hereunder, and shall be, where applicable, appropriately medically monitored during the activities undertaken. Ohio EPA shall not be required to provide any training to Subgrantee to enable it to perform its duties and obligations required hereunder.

42. (Non-discrimination)

a. Pursuant to ORC §§ 125.111 and 4112.02, Subgrantee agrees that Subgrantee, any subSubgrantees, and any person acting on behalf of Subgrantee or a subSubgrantee, shall not discriminate, by reason of race, color, religion, sex, military status, national origin, disability, age, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this Agreement.

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- b. Subgrantee further agrees that Subgrantee, any subSubgrantee, and any person acting on behalf of Subgrantee or a subSubgrantee shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, military status, national origin, disability, age, or ancestry.
- c. As required by ORC § 125.111(B), Subgrantee represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity / Affirmative Action Unit of the Department of Administrative Services. (The form may be completed with an electronic filing through the Ohio Business Gateway, available at <http://business.ohio.gov/>.)

43. (Compliance) In the performance of the duties and obligations under this Agreement, Subgrantee shall comply with all applicable:

- a. Ohio Governor Executive Orders;
- b. Federal, state and local laws, regulations (rules), assurances, orders, and Ohio Department of Commerce Prevailing Wage Guidelines, regarding prevailing wages, deductions, worker compensation, taxes, social security and unemployment, compensation, and any contributions thereto; and
- c. Federal state, and local laws and regulations (rules, ordinances), assurances, and orders, whether or not specifically referenced herein.

43a. (Small and Minority Business, and Women's Business Enterprises) The Subgrantee and subSubgrantees shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;

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- f. Requiring that subSubgrantees, if subcontracts are to be let, take the affirmative steps listed in this Paragraph;
- g. Pursuant to Executive Order No. 2008-12S, Subgrantee and subSubgrantees, if any, shall make a good faith effort to purchase from Ohio companies any goods and services acquired under this Agreement; and
- h. Pursuant to Executive Order No. 2008-13S, Subgrantee and subSubgrantees, if any, shall make a good faith effort to purchase goods and services from certified Minority Business Enterprise ("MBE") and Encouraging Diversity, Growth and Equity ("EDGE") program vendors. EDGE program guidance may be viewed online at: <http://das.ohio.gov/Divisions/EqualOpportunity/MBEEDGECertification/UnderstandingEDGE.aspx>. The list of State-certified MBE businesses may be found by accessing the following website: <http://eodreporting.oit.ohio.gov/searchEODReporting.aspx>.

44. **(Smoke-free / Drug-free Workplace)** Subgrantee agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or subSubgrantees engaged in the work being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

45. **(Campaign Contributions)**

- a. Subgrantee hereby certifies that neither Subgrantee nor any of Subgrantee's partners, officers, directors, shareholders nor the spouses of any such person, have made contributions in excess of the limitations specified in ORC § 3517.13.
- b. Subgrantee shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

46. **(Soliciting Donations)** Subgrantee shall not use any grant monies awarded under this Agreement to solicit donations or memberships to Subgrantee's organization.

47. **(Self-Promotion)** Any use of or reference to, this Agreement, or the existence thereof, by Subgrantee to promote the business of Subgrantee is prohibited, unless otherwise consented to in writing by the Grant Coordinator.

48. **(Conflicts of Interest and Vendor and Grantee Certification Language)**

- a. In the performance of this Agreement, neither Subgrantee nor any personnel of Subgrantee, shall, prior to the completion of the duties and obligations of this Agreement, acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her duties and obligations with respect to this Agreement.

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- b. Any person who acquires, whether voluntarily or involuntarily, an incompatible or conflicting personal interest, in contravention of this Paragraph shall immediately disclose his or her interest to the Grant Coordinator in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement, unless the Grant Coordinator determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.
- c. In the performance of this Agreement, Subgrantee shall at all relevant times comply with ORC § 102.04. Subgrantee shall also ensure that Subgrantee's employee(s), agent(s), representative(s), and/or subSubgrantee(s), comply with said Section.
- d. In the performance of this Agreement, any of the persons enumerated in this Paragraph who are not in conformity with ORC § 102.04 shall immediately disclose said nonconformity to the Grant Coordinator in writing. Thereafter, such person(s) shall not participate in any action affecting any work under this Agreement.

49. **(Federal Assurances)** By signing this Agreement, Subgrantee certifies that Subgrantee will:

- a. Comply if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance under certain conditions;
- b. Comply with environmental standards which may be prescribed pursuant to the following: (i) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514; (ii) notification of violating facilities pursuant to Executive Order 11738; (iii) protection of wetlands pursuant to Executive Order 11990; (iv) evaluation of flood hazards in flood plains in accordance with Executive Order 11988; (v) 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.); (vi) 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.); (vii) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (viii) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205);
- c. Comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers systems; and
- d. Assist Ohio EPA in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties) and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.)

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50. **(Procurement)** Subgrantee shall employ its own procurement procedures, provided that said procedures comply with applicable federal law and regulations, including, but not limited to, 40 CFR Parts 30 to 35, inclusive.

51. **(Mailing List)** Subgrantee shall include the Grant Coordinator on all project mailing lists and mailings.

52. **(Interest Accrual)**

- a. Subgrantee may deposit grant monies awarded under this Agreement in interest bearing or non-interest bearing accounts. Subgrantee shall document any interest accrued on grant monies awarded under this Agreement, under the federal portion of the quarterly Fiscal Report and fiscal portion of the Closing Reports required under this Agreement.
- b. Any interest accrued on grant monies awarded under this Agreement shall be administered pursuant to 40 CFR Section 31.21(i), in that Subgrantee shall promptly, but at least quarterly, remit interest earned on advances to Ohio EPA. The Subgrantee may keep interest amounts up to one hundred dollars (\$100.00) per calendar year for administrative expenses.

53. **(Debarment and Suspension)** (Note: This provision is pursuant to 40 CFR Part 32, with the corresponding federal regulation cited in parenthesis.)

- a. By entering into this Agreement, Subgrantee hereby certifies, affirmatively represents and warrants to Ohio EPA, that Subgrantee and its principals are not excluded or disqualified from entering into covered transactions under 40 CFR Part 32. (40 CFR §32.300)
- b. Subgrantee agrees that if this certification, representation and warranty is deemed to be false, this Agreement shall be *void ab initio* as between the parties to this Agreement, and any funds paid pursuant to this Agreement shall be immediately repaid to Ohio EPA or an action for recovery may be immediately commenced by the State or U.S. Government for recovery of said funds.
- c. Subgrantee shall comply with 40 CFR Part 32, Subpart C and pass the requirement to comply with said Subpart to each person with whom Subgrantee enters into a covered transaction at the next lower tier. (40 CFR § 32.330)
 - i. If at any time after entering into this Agreement, Subgrantee or its principals becomes excluded from entering into covered transactions under 40 CFR Part 32, Subgrantee shall so inform the Grant Coordinator in writing within seven (7) days of learning of such exclusion. Such exclusion may be cause for termination of this Agreement by Ohio EPA, at the discretion of the Director.

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- ii. Any Agreement in which a Subgrantee or its principal becomes excluded may not be renewed or extended (other than no-cost time extensions), unless the excluded persons are granted an exception by U.S. EPA under 40 CFR § 32.120. (40 CFR § 32.310)
- d. If at any time after entering into this Agreement, Subgrantee or its principal learns that Subgrantee or its principal failed to disclose information regarding exclusion or disqualification, Subgrantee shall so inform the Grant Coordinator in writing within seven (7) days of learning of such information. Such information may be a cause of termination of this Agreement by Ohio EPA, at the discretion of the Director. (40 CFR § 32.365)
- e. Terms used in this Paragraph shall have the same meaning as in 40 CFR Part 32.

53a. **(Debarment)** Subgrantee represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC §§153.02 or ORC 125.25. If this representation and warranty is found to be false, this Agreement is void *ab initio* and Subgrantee shall immediately repay to Ohio EPA any monies paid under this Agreement.

54. **(Patent or Copyright Infringement)** If applicable, Subgrantee shall report to the Grant Coordinator promptly and in reasonable written detail, each known notice or claim of patent or copyright infringement on this Agreement. In the event of any claim or suit against the State, on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, Subgrantee shall furnish, within thirty (30) days, when requested in writing by the Grant Coordinator, all evidence and information in possession of Subgrantee pertaining to such suit or claim.

55. **(Documents to be Submitted at time of Signature)** Notwithstanding any other provision of this Agreement, at the time Subgrantee signs this Agreement and submits this Agreement to Ohio EPA for signature by the Director, Subgrantee shall submit the following documents:

- a. Subgrantee's Travel and Reimbursement Policy, if in existence;
- b. Subgrantees subcontracting policy when entering into a contract with a sole source supplier, or when not opening the contracting process to bids; and
- c. A copy of a written code of standards of conduct governing the performance of Subgrantees and its employees engaged in the award and administration of contracts.

[Note: 40 CFR Section 31.36(b)(3) requires that "Grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts." "No employee, officer, or agent shall participate in the selection, award,

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or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved." OMB Circular A-110.]

Agreements submitted without the above specified documents will be considered as incomplete.

56. (Cost Incurred in Preparation of the Grant Application and Revisions Thereof) Cost incurred in the preparation of the grant application and any revisions thereof are not allowable costs.

57. (Certification Against Unresolved Findings for Recovery) Subgrantee represents and warrants that it is not subject to an "unresolved" finding for recovery under ORC § 9.24. If this warranty is deemed to be false, this Agreement shall be *void ab initio* and Subgrantee shall immediately repay to the State any funds paid under this Agreement.

58. (Certification of Sweatshop-Free Production) To the extent this Agreement involves the purchase of clothing, Subgrantee and subSubgrantees, if any, are prohibited from purchasing or arranging for the clothing from any supplier that is in noncompliance with applicable laws, including, but not limited to, laws establishing standards for wages, occupational safety and work hours. Further, Subgrantee hereby represents and warrants that it is not using any sweatshop, as described by Executive Order No. 2008-21S, in the production of clothing supplied under this Agreement.

59. (Headings) The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

60. (Compliance with Executive Order 2011-12K) Executive Order 2011-12K, signed June 21, 2011, provides that no State Cabinet Agency, Board or Commission ("Executive Agency") shall enter into any contract which uses any public funds within its control to purchase services which will be provided outside the United States. This Executive Order applies to all purchases of services made directly by an Executive Agency and services provided by Subgrantee and any subSubgrantees providing services purchased by an Executive Agency.

By the signature affixed to this Grant, Subgrantee, unless exempted by the Executive Order, affirms that it understands and will abide by the requirements of Executive Order 2011-12K and shall disclose:

- a. The location(s) where all services will be performed by Subgrantee or any subSubgrantees;
- b. The locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored;

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- c. Any shift in the location of any services being provided by Subgrantee or any subSubgrantees; and
- d. The principal location of business for Subgrantee or any subSubgrantees who are supplying services to the state under the Grant.

By signing below, Subgrantee assures and certifies that the specific information detailed in this Agreement, including the project work plan contained in the Grant Application, is current, accurate and complete, and that Subgrantee has the legal authority to apply for State and Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in the project work plan.

By signing below, Subgrantee further assures and certifies that Subgrantee has been advised of the requirements imposed upon Subgrantee by federal laws, regulations, and the provisions of this Agreement, as well as any supplemental requirements imposed by Ohio EPA.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by officials thereunto duly authorized as of the date and year signed below.

(Subgrantee's Signature)

Date

Name and Title (Print)

Scott J. Nally, Director
Ohio Environmental Protection Agency

Date