

AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS
AND ENCAP, INC. FOR PROFESSIONAL NATIVE VEGETATION MANAGEMENT
SERVICES

This Professional Service Agreement (“AGREEMENT”), is made this 12th of April, 2023 between COUNTY OF DUPAGE, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and ENCAP, INC., licensed to do business in the State of Illinois, with offices at 2585 Wagner Court, DeKalb, IL 60115; (hereinafter referred to as the CONSULTANT). The COUNTY and the CONSULTANT are hereafter sometimes individually referred to as a “party” or together as the “parties.”

R E C I T A L S

WHEREAS, the Illinois General Assembly has granted the County of DuPage ("COUNTY") authority to develop watershed plans, undertake measures to control and protect against flooding, manage stormwater and to enter into agreements for the purposes of stormwater management and flood control (Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-1062.3 and 5/5-15001 et seq.); and

WHEREAS, pursuant to said authority, the COUNTY has constructed stormwater management, drainage and flood control facilities, several of which have native vegetation components installed per the applicable governmental regulations; and

WHEREAS, the COUNTY requires professional services associated with native vegetation management at various County facilities as determined necessary in compliance with the DuPage County Countywide Stormwater and Flood Plain Ordinance and U.S. Army Corps of Engineers (“ACOE”) approvals; and

WHEREAS, CONSULTANT has experience and expertise in this area and is in the business of providing such professional native vegetation management services and is willing to perform the required services for an amount not to exceed one hundred thousand dollars (\$100,000.00); and

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.

- 1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.
- 1.3 The exhibits referenced in this AGREEMENT shall be deemed incorporated herein and a part thereof.

2.0 SCOPE OF SERVICES.

- 2.1 Services are to be provided by the CONSULTANT according to the specifications in the Scope of Work, specified as Exhibit "A", attached hereto, which exhibit is hereby incorporated by reference. The CONSULTANT shall complete all of the work set forth in said exhibit for the compensation set forth in Paragraph 7.2, below, unless otherwise modified.
- 2.2 The COUNTY may, from time to time, request changes in the Scope of Work. Any such changes, including any increase or decrease in CONSULTANT'S compensation or Scope of Work, shall be documented by an amendment to this AGREEMENT in accordance with Section 14.0 of this AGREEMENT, except as allowed in Paragraph 15.3, below.
- 2.3 The relationship of CONSULTANT to COUNTY is that of independent contractor, and nothing in this AGREEMENT is intended nor shall be construed to create an agency, employment, joint venture relationship, or any other relationship allowing COUNTY to exercise control or direction over the manner or method by which CONSULTANT or its vendors/sub-contractors/sub-consultants provide services hereunder. Neither the CONSULTANT nor the CONSULTANT's employees shall be entitled to receive any COUNTY benefits. The CONSULTANT shall be solely responsible for the payment of all taxes and withholdings required by law which may become due with regard to any compensation paid by the COUNTY to the CONSULTANT.
- 2.4 Any work, assignments, or services to be performed by professionals under this AGREEMENT shall be performed and, or, supervised by individuals licensed to practice by the State of Illinois in the applicable professional discipline.

3.0 NOTICE TO PROCEED.

- 3.1 Authorization to proceed with tasks described in Exhibit "A" shall be given on behalf of the COUNTY by the Director of Stormwater Management, (hereinafter referred to as the "DIRECTOR"), in the form of a written notice to proceed following execution of the AGREEMENT by the appropriate County official.

- 3.2 In addition to the Notice to Proceed, the DIRECTOR or his/her designee, may, on behalf of the COUNTY, approve, deny, receive, accept or reject any submission, notices or invoices from or by CONSULTANT, as provided for in this AGREEMENT, including, but not limited to, acts performed in accordance with Paragraphs 3.3, 4.1, 5.2, 6.4, 7.1, 8.2, 8.3., 15.3 and 21.2.
- 3.3 The CONSULTANT shall not perform additional work related to a submittal made to the COUNTY until the COUNTY has completed its review of the submittal unless otherwise directed by the DIRECTOR or his designee. The CONSULTANT may continue to work on items unrelated to the submittal under review by the COUNTY.

4.0 TECHNICAL SUBCONSULTANTS.

- 4.1 The prior written approval of the COUNTY, through the person designated in Paragraph 3.1 above, shall be required before CONSULTANT hires any sub-consultant(s) to complete COUNTY-ordered technical or professional tasks or work included within the Scope of Work.
- 4.2 The CONSULTANT shall supervise any sub-consultant(s) hired by the CONSULTANT, and the CONSULTANT shall be solely responsible for any and all work performed by said sub-consultant(s) in the same manner and with the same liability as if the vendors' work was performed by the CONSULTANT under this AGREEMENT.
- 4.3 The CONSULTANT shall require any sub-consultant, or sub-contractor, hired for the performance of any work or activity in connection to this AGREEMENT to agree and covenant that the sub-consultant, or sub-contractor, also meets the terms of Sections 8.0 and 13.0 and Paragraphs 7.9 and 24.4 of this AGREEMENT and shall fully comply therewith while engaged by CONSULTANT in COUNTY-ordered tasks or work. The CONSULTANT shall further require every sub-consultant, and sub-contractor, hired for the performance of any work or activity in connection to this AGREEMENT to agree and covenant to indemnify, defend and hold the COUNTY harmless to the same extent the CONSULTANT is required to do so pursuant to Section 9.0 of this AGREEMENT.

5.0 TIME FOR PERFORMANCE

- 5.1 The CONSULTANT shall commence work within five (5) working days after the COUNTY issues its Written Notice to Proceed. The COUNTY is not liable and will not pay the CONSULTANT for any work performed before the date of the Notice to Proceed.
- 5.2 Unless otherwise defined in the Scope of Work, the CONSULTANT shall submit a schedule for completion of the project within ten (10) days of the

written Notice to Proceed. The schedule is subject to approval by the COUNTY. All of the services required hereunder shall be completed by April 30, 2024 unless the term of this AGREEMENT is extended.

- 5.3 If the CONSULTANT is delayed at any time in the progress of the work by any act or neglect of the COUNTY or by any employee of COUNTY or by changes ordered by the COUNTY, or any other causes beyond the CONSULTANT'S control then the sole remedy and allowance made shall be an extension of time for completion. Such extension shall be that which is determined reasonable by the COUNTY upon consultation with CONSULTANT. The CONSULTANT shall accept and bear all other costs, expenses and liabilities that may result from such delay.

6.0 DELIVERABLES.

- 6.1 The CONSULTANT shall provide the COUNTY on or before the expiration of this AGREEMENT, or within fourteen (14) days following a notice of termination, or when the DIRECTOR directs, the deliverables specified in Exhibit A of this AGREEMENT, attached hereto, which is hereby incorporated by reference.

7.0 COMPENSATION.

- 7.1 The COUNTY shall pay the CONSULTANT for services rendered and shall only pay in accordance with the provisions of this AGREEMENT. The COUNTY shall not be obligated to pay for any services not in compliance with this AGREEMENT.
- 7.2 Total payments to the CONSULTANT under the terms of this AGREEMENT shall not under any circumstances exceed one hundred thousand dollars (\$100,000.00). This amount is a "not to exceed" amount. In the event the COUNTY directs CONSULTANT to do work which would cause the stated amount to be exceeded, the CONSULTANT shall not be responsible for such work until this AGREEMENT is modified pursuant to Article 14.0.
- 7.3 For work performed, as outlined on Exhibit A the COUNTY will pay for each specified task at the fees set forth on Exhibit B. Additional tasks as approved by the COUNTY shall be paid at an hourly rate basis at a 2.8 multiplier applied to the actual hourly rates of CONSULTANT'S staff. The multiplier includes the CONSULTANT'S overhead, profit and incidental costs. A chart listing the hourly rates, with the multiplier applied, for CONSULTANT'S staff, identified by position or assignment, is also set forth in Exhibit B.

- 7.4 Direct expenses are costs for supplies and materials to be paid for by the COUNTY for completion of all work defined in Exhibit B. For direct expenses, including supplies, materials, photocopying, postage/shipping, and other costs directly related to the specific reports and presentations as required by the COUNTY, the COUNTY shall pay on an actual cost basis without any markup added.
- 7.4.a For all direct expenses costing more than \$25.00, the CONSULTANT shall include with its invoice to the COUNTY, as documentation of such expenses, copies of receipts from the Consultant's vendors indicating the price(s) paid by Consultant for such expensed materials and/or items.
- 7.4.b CONSULTANT shall not include computer and vehicle charges (including mileage) as direct expenses.
- 7.5 The CONSULTANT shall submit its invoices, for services rendered and allowable expenses, to the COUNTY on a not more often than monthly basis, and no later than sixty (60) days following completion of the work being invoiced. Each invoice shall summarize, as applicable, the tasks performed, the budgeted hours and money for the pay period per task, the actual hours and money spent during the pay period per task, personnel used per task, and the percentage complete for each task. When requested by the COUNTY as a condition of Federal or State assistance and, or, reimbursement, the CONSULTANT shall submit certified time sheets as additional documentation for the invoiced work. The CONSULTANT shall provide the COUNTY with a valid taxpayer identification number prior to making any request for compensation.
- 7.6 Upon receipt, review and approval of properly documented invoices, the COUNTY shall pay, or cause to be paid, to the CONSULTANT the amounts invoiced, provided that the amount invoiced together with the amounts of previous partial payments do not exceed the total compensation specified in this AGREEMENT. The COUNTY may not deny a properly documented claim for compensation, in whole or in part, without cause. The COUNTY reserves the right to hold back a sum equal to not more than five percent (5%) of the total contract sum to ensure CONSULTANT's full performance. The COUNTY shall not be required to pay CONSULTANT more often than monthly.
- 7.7 Following the CONSULTANT's satisfactory completion of all work specified in Exhibit B, and upon receipt, review and acceptance of all deliverables specified in Exhibit A, the COUNTY shall make its final payment to the CONSULTANT,

including payment of any retainage held back pursuant to Paragraph 7.6 above.

- 7.8 The COUNTY reserves the right to charge for additional processing of invoices received more than sixty (60) days following the date of the work invoiced. Payment will not be made on invoices submitted later than six-months (180 days) after the expiration date of this AGREEMENT and any statute of limitations to the contrary is hereby waived.
- 7.9 Invoices containing charges for work subject to the Illinois Prevailing Wage Act (820 ILCS 130/) are required to be accompanied by the applicable Certified Transcript of Payroll form(s) for acceptance. If the scope of work for this AGREEMENT includes the use of job classifications covered by the prevailing rate of wages, the prevailing rate must be reflected in the cost estimate for this AGREEMENT. The rates have been ascertained and certified by the Illinois Department of Labor for the locality in which work is to be performed. If the Illinois Department of Labor revises the prevailing rates of wages to be paid, as listed in the specification of rates, the CONSULTANT may not pay less than the revised rates of wages. Current wage rate information shall be obtained by visiting the Illinois Department of Labor website at <http://www.state.il.us/agency/idol/> or calling (312) 793-2814. It is the responsibility of the CONSULTANT to review the rates applicable to the work in this AGREEMENT, at regular intervals, in order to insure the timely payment of current rates. Provision of this information to the CONSULTANT, by means of the Illinois Department of Labor website, satisfies the notification of revisions by the COUNTY to the CONSULTANT, pursuant to the Act, and the CONSULTANT agrees that no additional notice is required. The CONSULTANT shall notify each of its sub-consultants and sub-contractors of the revised rates of wages.

8.0 CONSULTANT'S INSURANCE

- 8.1 The CONSULTANT shall maintain, at its sole expense, insurance coverage including:
- 8.1.a **Worker's Compensation Insurance** in the statutory amounts.
 - 8.1.b **Employer's Liability Insurance** in an amount not less than one million dollars (\$1,000,000.00) each accident/injury and one million dollars (\$1,000,000.00) each employee/disease.
 - 8.1.c **Commercial (Comprehensive) General Liability Insurance**, (including contractual liability) with a limit of not less than three million dollars (\$3,000,000.00) aggregate; including limits of not less than two million dollars (\$2,000,000.00) per occurrence, and one million dollars (\$1,000,000.00) excess liability. **An Endorsement**

must also be provided naming the County of DuPage c/o Director, Stormwater Management Department, its' officers, elected officials and employees, 421 N. County Farm Rd., Wheaton, IL 60187, as an additional insured. This additional insured endorsement is to be on a primary and non-contributory basis and include a waiver of subrogation endorsement.

8.1.d **Commercial (Comprehensive) Automobile Liability Insurance** with minimum limits of at least one million dollars (\$1,000,000.00) for any one person and one million dollars (\$1,000,000.00) for any one occurrence of death, bodily injury or property damage in the aggregate annually. **An Endorsement must also be provided naming the County of DuPage Director, Stormwater Management Department, its' officers, elected officials and employees, 421 N. County Farm Rd., Wheaton, IL 60187, as an additional insured. This additional insured endorsement is to be on a primary and non-contributory basis and include a waiver of subrogation endorsement.**

8.1.e **Professional Liability Insurance (Errors and Omissions)** shall be provided with minimum limits of at least one million dollars (\$1,000,000.00) per incident/two million dollars (\$2,000,000.00) aggregate during the term of this AGREEMENT and shall be maintained in the form of an additional endorsement for a period of four (4) years after the date of the final payment for this AGREEMENT. The CONSULTANT shall provide the COUNTY endorsements at the beginning of each year evidencing same or a new carrier policy that has a retroactive date prior to the date of this AGREEMENT.

- 8.2 It shall be the duty of the CONSULTANT to provide to the COUNTY copies of the CONSULTANT'S Certificates of Insurance, as well as all applicable coverage and cancellation endorsements before issuance of a Notice to Proceed. It is the further duty of the CONSULTANT to immediately notify the COUNTY if any insurance required under this AGREEMENT has been cancelled, materially changed, or renewal has been refused, and the CONSULTANT shall immediately suspend all work in progress and take the necessary steps to purchase, maintain and provide the required insurance coverage. If a suspension of work should occur due to insurance requirements, upon verification by the COUNTY of the CONSULTANT curing any breach of its required insurance coverage, the COUNTY shall notify the CONSULTANT that the CONSULTANT can resume work under this AGREEMENT. The CONSULTANT shall accept and bear all costs that may result from the cancellation of this AGREEMENT due to CONSULTANT'S failure to provide and maintain the required insurance.
- 8.3 The coverage limits required under subparagraphs 8.1.c and 8.1.d above may be satisfied through a combination of primary and excess coverage. The insurance required to be purchased and maintained by the CONSULTANT shall be provided by an insurance company acceptable to the COUNTY, and except for the insurance required in subparagraph 8.1.e licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater; and shall be so endorsed that the coverage afforded will not be canceled or materially changed until at least sixty (60) days prior written notice has been given to the COUNTY except for cancellation due to non-payment of premium for which at least fifteen (15) days prior written notice (five days allowed for mailing time) has been given to the COUNTY. If the CONSULTANT is satisfying insurance required through a combination of primary and excess coverage, the CONSULTANT shall require that said excess/umbrella liability policy include in the "Who is Insured" pages of the excess/umbrella policy wording such as "Any other person or organization you have agreed in a written contract to provide additional insurance" or wording to that effect. The CONSULTANT shall provide a copy of said section of the excess/umbrella liability policy upon request by the COUNTY.
- 8.4 The CONSULTANT shall require that all approved sub-consultants performing work under this AGREEMENT, including anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable under this AGREEMENT, to maintain the same insurance required of the CONSULTANT, and, further, which names the COUNTY as an additional insured on a primary and non-contributory basis in the same coverage types and same coverage amounts as the CONSULTANT is required to maintain per Section 8.0. The CONSULTANT shall keep on file evidence of its vendors' insurance coverage at all times and shall produce same to the COUNTY upon

demand.

- 8.5 CONSULTANT'S insurance required by Paragraphs 8.1.c and d, above, shall name the COUNTY, its officers and employees as additional insured parties. The Certificate of Insurance and endorsements shall state: "The County of DuPage, its officers and employees are named as additional insureds as defined in the [Commercial (Comprehensive) General Liability Insurance policy and/or Commercial (Comprehensive) Automobile Liability Insurance policy, as applicable] with respect to claims arising from CONSULTANT'S performance under this AGREEMENT."

9.0 INDEMNIFICATION

- 9.1 The CONSULTANT shall indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or directly connected with, the CONSULTANT'S, or its vendor's, negligent or willful misconduct, errors or omissions in its, or their, performance under this AGREEMENT.
- 9.2 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, the attorney representing the COUNTY, under this paragraph or paragraph 9.1, must be the State's Attorney, in accordance with the applicable law. The COUNTY'S participation in its defense shall not remove CONSULTANT'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.
- 9.3 Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. CONSULTANT'S indemnification of COUNTY shall survive the termination, or expiration, of this AGREEMENT.

- 9.4 The COUNTY does not waive, by these indemnity requirements, any defenses or protections under the Local Government and Governmental Employees Tort Liability Act (745 ILCS 10/1, et seq.) or otherwise available to it, or the CONSULTANT, under the law.

10.0 SATISFACTORY PERFORMANCE

- 10.1 The COUNTY is engaging this CONSULTANT because the CONSULTANT professes to the COUNTY that it will employ the standard of care within its profession in the performance of the services herein contracted. Accordingly, the CONSULTANT'S, and subconsultant(s), standard of performance under the terms of this AGREEMENT shall be that which is to the satisfaction of the COUNTY and meets the quality and standards commonly provided by similar professional firms practicing in DuPage County, Illinois.
- 10.2 In the event there are no similar professional firms practicing in DuPage County, Illinois, with respect to the type of work for which this CONSULTANT has been engaged, the CONSULTANT'S services, and its vendors', shall be performed in a manner consistent with the customary skill and care of its profession.
- 10.3 If any errors, omissions, or acts, intentional or negligent, are made by the CONSULTANT, or its' sub-consultant(s), in any phase of the work, the correction of which requires additional field or office work, the CONSULTANT shall be required to perform such additional work as may be necessary to remedy same without undue delay and without charge to the COUNTY. In the event any errors or omissions are detected after the AGREEMENT'S expiration or termination, the CONSULTANT shall have no right to cure under this provision.
- 10.4 Acceptance of the work shall not relieve the CONSULTANT of the responsibility for the quality of its work, nor its liability for loss or damage resulting from any errors, omissions, or negligent or willful misconduct by the CONSULTANT or its sub-consultant(s).

11.0 BREACH OF CONTRACT

- 11.1 In the event of any breach of contract, the non-breaching party shall give notice to the breaching party stating with particularity the nature of the alleged breach. The breaching party shall be allowed a reasonable opportunity to cure the breach. A Party's failure to timely cure any material breach of this AGREEMENT shall relieve the other Party of the requirement to give thirty (30) day notice for termination of this AGREEMENT in accordance with Paragraph 16.1, below. Whenever a Party hereto has failed to timely cure a breach of this AGREEMENT, the other Party may terminate this AGREEMENT by giving ten

(10) days written notice thereof to the breaching party. Notwithstanding the above term, the CONSULTANT'S failure to maintain insurance in accordance with Section 8.0, above, or in the event of any of the contingencies described in Paragraph 16.1, below, shall be grounds for the COUNTY'S immediate termination of this AGREEMENT. A breach of any covenant or term of this AGREEMENT by one of the CONSULTANT'S vendors shall be deemed a breach by the CONSULTANT.

12.0 OWNERSHIP OF DOCUMENTS.

- 12.1 The CONSULTANT agrees that all deliverables prepared for the COUNTY under the terms of this AGREEMENT shall be properly arranged, indexed and delivered to the COUNTY as provided in Paragraph 6.1. An electronic copy of all applicable deliverables, in a format designated by the COUNTY'S representative, shall be provided to the COUNTY.
- 12.2 The documents and materials made or maintained under this AGREEMENT shall be and will remain the property of the COUNTY which shall have the right to use same without restriction or limitation and without compensation to the CONSULTANT other than as provided in this AGREEMENT. The CONSULTANT waives any copyright interest in said deliverables.
- 12.3 The COUNTY acknowledges that the use of information that becomes the property of the COUNTY pursuant to Paragraph 12.2, for purposes other than those contemplated in this AGREEMENT, shall be at the COUNTY'S sole risk.
- 12.4 The CONSULTANT may, at its sole expense, reproduce and maintain copies of deliverables provided to COUNTY.

13.0 COMPLIANCE WITH THE LAW AND OTHER AUTHORITY.

- 13.1 The CONSULTANT, and sub-consultant(s), shall comply with Federal, State and Local statutes, ordinances and regulations and obtain permits, licenses, or other mandated approvals, whenever applicable.
- 13.2 The CONSULTANT, and sub-consultant(s), shall not discriminate against any worker, job applicant, employee or any member of the public, because of race, creed, color, sex, sexual orientation, age, handicap, or national origin, or otherwise commit an unfair employment practice. CONSULTANT, and sub-consultant(s), shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101, et seq., and with all rules and regulations established by the Department of Human Rights.
- 13.3 The CONSULTANT, by its signature on this AGREEMENT, certifies that it has not been barred from being awarded a contract or subcontract under the Illinois

Procurement Code, 30 ILCS 500/1-1, et seq.; and further certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (Illinois Compiled Statutes, Chapter 720, paragraph 5/33E-3); and further certifies that it has not been barred from public contracting under any Federal statute or regulation. The CONSULTANT agrees that it shall not use any vendor that has been barred from being awarded a public contract, or subcontract, under Illinois or Federal law to perform work under this AGREEMENT.

- 13.4 The CONSULTANT, by its signature on this AGREEMENT, certifies that no payment, gratuity or offer of employment, except as permitted by the Illinois State Gift Ban Act and the County of DuPage Ethics Ordinance, was made by or to the CONSULTANT, or CONSULTANT'S personnel, in relation to this AGREEMENT. The CONSULTANT has also executed the attached Ethics Disclosure Statement that is made a part hereof and agrees to update contribution information on an ongoing basis during the life of the AGREEMENT as required by said Ordinance.
- 13.5 The CONSULTANT covenants that it has no conflicting public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of CONSULTANT'S services under this AGREEMENT.

14.0 MODIFICATION OR AMENDMENT.

- 14.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties.
- 14.2 The CONSULTANT acknowledges receipt of a copy of the DuPage County Procurement Ordinance, which is hereby incorporated into this AGREEMENT, and has had an opportunity to review it. CONSULTANT agrees to submit changes to the Scope of Work or compensation in accordance with said Ordinance.

15.0 TERM OF THIS AGREEMENT.

- 15.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:
 - (a) The early termination of this AGREEMENT in accordance with the terms of Section 16.0, or
 - (b) The expiration of this AGREEMENT on April 30, 2024, or to a new date agreed upon by the parties.

- (c) The completion by the CONSULTANT and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before April 30, 2024.
 - (d) The COUNTY and CONSULTANT reserve the right to renew this contract for a one year term period, with expressed written agreement between both parties. If both parties elect to renew, this Agreement shall be extended through April 30, 2025.
- 15.2 The CONSULTANT shall not perform any work under this AGREEMENT after the expiration date set forth in Paragraph 15.1(b), above, or after the early termination of this AGREEMENT, or during a provisional extension period. The COUNTY is not liable and will not pay the CONSULTANT for any work performed after the AGREEMENT'S expiration or termination. However, nothing herein shall be construed so as to relieve the COUNTY of its obligation to pay the CONSULTANT for work satisfactorily performed prior to the AGREEMENT'S termination, or expiration, and delivered in accord with Paragraph 6.1, above.
- 15.3 The term for performing this AGREEMENT may be amended by a Change Order, or other COUNTY designated form, signed by both parties without formal amendment pursuant to Paragraph 14.1, above.

16.0 TERMINATION

- 16.1 Except as otherwise set forth in this AGREEMENT, either party shall have the right to terminate this AGREEMENT for any cause or without cause thirty (30) days after having served written notice upon the other party, except in the event of CONSULTANT'S failure to maintain suitable insurance at the requisite coverage amounts, insolvency, bankruptcy or receivership, or if the CONSULTANT is barred from contracting with any unit of government, or is subsequently convicted or charged with a violation of any of the statutes or ordinances identified in Section 13.0, above, in which case termination shall be effective immediately upon receipt of notice from the COUNTY, at the COUNTY'S election.
- 16.2 Upon such termination, the liabilities of the parties to this AGREEMENT shall cease, excepting surviving insurance and indemnification obligations, but the parties shall not be relieved of the duty to perform their obligations up to the date of termination, or to pay for deliverables tendered prior to termination. There shall be no termination expenses.
- 16.3 Upon termination of this AGREEMENT, all data, work products, reports and documents produced because of this AGREEMENT shall become the property of the COUNTY. Further, CONSULTANT shall provide all deliverables within

fourteen (14) days of termination in accordance with the other provisions of this AGREEMENT.

17.0 ENTIRE AGREEMENT.

- 17.1 This AGREEMENT, including matters incorporated herein, contains the entire agreement between the parties.
- 17.2 There are no other covenants, warranties, representations, promises, conditions or understandings; either oral or written, other than those contained herein.
- 17.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- 17.4 In event of a conflict between the terms or conditions of this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail

18.0 ASSIGNMENT.

- 18.1 Either party may assign this AGREEMENT provided, however, the other party shall first approve such assignment, in writing.

19.0 SEVERABILITY

- 19.1 In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.
- 19.2 In the event of the contingency described in Paragraph 19.1, above, the parties shall make a good faith effort to amend this AGREEMENT pursuant to Paragraph 14.1, above, in order to remedy and, or, replace any provision declared unenforceable or invalid.

20.1 GOVERNING LAW.

- 20.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.

- 20.2 The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.

21.0 NOTICES.

- 21.1 Any required notice shall be sent to the following addresses and parties:

ENCAP, INC.
2585 Wagner Court
DeKalb, IL
ATTN: Melissa Wheeler

DuPage County Stormwater Management
421 N. County Farm Road
Wheaton, Illinois 60187
ATTN: Sarah Hunn

DuPage County State's Attorney's Office
503 N. County Farm Rd
Wheaton, IL 60187
ATTN: Civil Bureau

- 21.2 All notices required to be given under the terms of this AGREEMENT shall be in writing and either (a) served personally during regular business hours; (8:00 a.m.-4:30 p.m. CST or CDT Monday–Friday); or (b) served by facsimile transmission during regular business hours (8:00 a.m.-4:30 p.m. CST or CDT Monday–Friday); or (c) served by email transmittal during regular business hours (8:00 a.m.-4:30 p.m. CST or CDT Monday–Friday), return receipt requested; or (d) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, notices served by email shall be effective upon confirmation of delivery by electronic receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 14.1, above.

22.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

- 22.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the

failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

23.0 FORCE MAJEURE.

- 23.1 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

24.0 QUALIFICATIONS

- 24.1 The CONSULTANT shall employ only persons duly licensed or registered in the appropriate category in responsible charge of all elements of the work covered under this AGREEMENT, for which Illinois Statutes require license or registration, and further shall employ only well qualified persons in responsible charge of any elements of the work covered under this AGREEMENT, all subject to COUNTY approval. This provision shall also apply to any sub-consultant(s) used by the CONSULTANT in the performance of AGREEMENT-related work.

24.2 RESERVED

- 24.3 Failure of the CONSULTANT to use qualified personnel to perform technical or professional service for any task, assignment or project related to this AGREEMENT shall be sufficient cause for the COUNTY to deny payment for services performed by unqualified personnel and will serve as a basis for an immediate termination of this AGREEMENT.

- 24.4 The CONSULTANT shall require all sub-consultants utilized for AGREEMENT-related work to employ qualified persons to the same extent such qualifications are required of the CONSULTANT'S personnel. The COUNTY shall have the same rights under Paragraph 24.3, above, with respect to the CONSULTANT'S vendors being properly staffed while engaged in AGREEMENT-related work.

25.0 ACCESS TO PROPERTY.

- 25.1 The CONSULTANT shall make a reasonable effort to obtain access to property of a third party necessary for the performance of its obligations under this AGREEMENT. If CONSULTANT is unable to obtain access to the property, the COUNTY shall be responsible for securing access for the CONSULTANT. In the event the COUNTY cannot secure access to property for the CONSULTANT, the COUNTY shall excuse the CONSULTANT from the performance of any work that necessitated such access. The CONSULTANT shall have no claim to compensation for any work excused under this provision.

The COUNTY shall provide the CONSULTANT, upon CONSULTANT'S request, proof of COUNTY'S permission, or legal authority, to enter onto the property of a third party.

- 25.2 In the event of the following: a) it is necessary for the CONSULTANT to access the property of a third party in order for the CONSULTANT to perform its obligations under this AGREEMENT, and b) the COUNTY has obtained an easement, license or other grant of authority allowing the CONSULTANT to access such property; the CONSULTANT shall fully abide by and comply the terms and conditions of said authorizing instrument as though the CONSULTANT were a signatory thereto.

IN WITNESS OF, the parties set their hands and seals as of the date first written above.

COUNTY OF DUPAGE

ENCAP, INC.

BY: _____
DEBORAH A. CONROY
CHAIR
DUPAGE COUNTY BOARD

BY: _____
MELISSA WHEELER
VICE PRESIDENT
ENCAP, INC

ATTEST BY: _____ ATTEST BY: _____

JEAN KACZMAREK
COUNTY CLERK

NAME:
TITLE:

EXHIBIT A

This Exhibit includes the scope of work for the services of ENCAP, Inc for professional on-call services related to native vegetation management.

Management of native plant communities will be completed utilizing the most effective methods of native plant community management under the current state of ecological restoration science. Skill sets of CONSULTANT'S employees shall include the ability to identify native and non-native plants, understand the reproductive cycles of invasive species, and be trained and experienced in selective herbicide application and prescribed burning methods. CONSULTANT will complete the following tasks (deliverables) for the County as part of this contract:

- **Native Seed/Plugs Installation.** CONSULTANT will obtain and determine the methodology for installation (Hand broadcast, machine broadcast, drill seed, etc.) of native seed based on site conditions. CONSULTANT will install native seed within proper planting zones based on their knowledge of native plant habitat, growing conditions, and the species as selected and approved by the COUNTY.

CONSULTANT will use seed and plug stock acquired within 150 miles of the project site. If required species are not available within that radius, prior approval to extend the distance or allow a species substitution will be required. CONSULTANT shall not be required to utilize seed stock costing more than \$1800 per acre for hand broadcasting 1 (permanent seeding) and \$1200 per acre for hand-broadcasting 2 (supplemental seeding). The intent of supplemental seeding is to install seeding within existing vegetation and/or large dead zones due to large stands of invasive species coverage. This does not include overspray due to contractor error. Ground preparation is not included with cost of seed nor does it include pre-herbicide application or removal of existing vegetation, when needed. Plugs of common native species will be used when requested.

- **Herbicide Application/Hand Pulling Targeting Non-native/Invasive Species.** CONSULTANT will determine what type of herbicide or methodology to utilize based on the species targeted for elimination, time of year, coverage of target species, etc. Herbicide will be applied only by a licensed herbicide applicator that has been trained in native plant identification and application methodology.

Applicators and operators will be licensed by the State of Illinois and must be well trained in plant identification and proper application techniques. This line item includes all equipment and herbicide. Herbicide use must be applied in strict compliance with all applications rates, procedures, warning labels and applicable codes, standards and best management practices. The CONSULTANT will apply for the NPDES pesticide permits as required. The cost for obtain the permit is included within the cost for herbicide application, however fees for the EcoCAT consultation are not included in the cost and will be directly reimbursed by the COUNTY, if necessary.

CONSULTANT can bill for one acre minimum for herbicide application however, the COUNTY will often combine several individual lots located in close proximity to be equivalent to one acre/one work site. The acre minimum cost shall only be charged when such scheduling and coordination is not possible. Use of 2B, 2D, or 2G heavy coverage must be approved in writing by SWM staff.

- **Prescribed Burn.** CONSULTANT will complete prescribed burn services with professionally trained staff. CONSULTANT will obtain all necessary permits from regulatory authorities as necessary. A pre-determined burn plan specifically designed for an individual site with consideration to existing structures, the vegetative fuel type, and weather conditions.

Work includes notifications, establishing fire breaks, conducting the burn safely, extinguishing all hot spots and all equipment necessary to complete a controlled burn. Burns shall be completed under the supervision of the CONSULTANTS staff who have been certified through the Illinois Department of Natural Resources as a Prescribed Burn Manager and National Wildfire Coordinating Groups S130- S190. At a minimum CONSULTANT's employees participating in the prescribed burn shall have a Chicago Wilderness Midwest Ecological Burn Crew Member Certification. CONSULTANT shall maintain all bond and insurance coverage required under applicable Federal, State and Local Law to perform prescribed burns in addition to the requirements in this agreement.

- **Selective Clearing.** CONSULTANT will remove brush of only non-native and invasive species when directed by the COUNTY. Brush clearing is typically completed during the winter season; therefore, the CONSULTANT'S employees will be trained in the identification of woody brush species during all seasons.

This work may include woody material up to 5" DBH and includes herbicide application to all stumps. Cut, stack, and burn includes notifications, securing all necessary permits and other applicable requirements/certifications listed above under prescribed burn. Cut and stack may involve dragging materials a short distance for easy pick-up by others.

- **Mowing.** CONSULTANT will complete specialized or high mowing to reduce coverage of non-native or invasive species within a naturalized area. Prior to mowing the CONSULTANT will consider the target species, timing of reproductive cycle of the target species, and existing site conditions. Mowing will be scheduled as such, so that it does not interfere with the growth and spread of the desirable native species. Mowing services shall be timed to minimize weed seed production. Mowing includes operator, equipment, and fuel.
- **Erosion Control Blanket Installation.** CONSULTANT will obtain and determine the type of blanket necessary based on site conditions, time of year, steepness of slope (when present) to ensure successful germination of native plants. Erosion control blanket must be 100% biodegradable. Cost includes purchase of the materials and installation.
- **Other Native Landscaping Services.** CONSULTANT will provide other services as determined necessary and approved by the COUNTY. These tasks will be completed as required to meet specific permit performance requirements of the County and U.S. Army Corps of Engineers or the overall site restoration goals.

Exhibit B

SECTION 8 - BID FORM PRICING

The CONSULTANT shall invoice the COUNTY for services rendered, as ordered by the COUNTY, at the fees set forth herein. CONSULTANT's fees include all wages and salaries for personnel, materials, equipment rental, mileage, mobilization and overhead expenses related to the CONSULTANT's performance of the specified service or task.

NO	ITEM	UOM	PRICE
1	SEEDING/PLANTING:		
	a. hand broadcast 1 (permanent seeding)	ACRE	3,220.00
	b. hand broadcast 2 (supplemental seeding)	ACRE	2,600.00
	b. ATV/machine broadcast	ACRE	3,000.00
	c. drill seed	ACRE	3,220.00
	d. ground prep (light roto-tilling)	ACRE	350.00
	e. installation of plant plug (2.25" x 5" sized) Common native species will be requested	EA	6.25
	f. installation of plant plug (1 gallon sized) Common native species will be requested	EA	25.00
	TOTAL SECTION 1		12,421.25

2	HERBICIDE APPLICATION		
	a. spot spray (routine/light to moderate coverage)	ACRE	425.00
	b. spot spray (heavy coverage)	ACRE	585.00
	c. hand wick (routine/light to moderate coverage)	ACRE	1,450.00
	d. hand wick (heavy coverage)	ACRE	2,250.00
	e. boom spray	ACRE	350.00
	f. basal bark treatment (routine/light to moderate coverage)	ACRE	3,500.00
	g. basal bark treatment (heavy coverage)	ACRE	7,250.00
	TOTAL SECTION 2		15,810.00

NO	ITEM	UOM	PRICE
3	SELECTIVE CLEARING		
	a. cut, stack, burn (light density)	ACRE	3,850.00
	b. cut, stack, burn (medium density)	ACRE	5,100.00
	c. cut, stack, burn (heavy density)	ACRE	5,500.00
	d. cut and stack only (light density)	ACRE	3,350.00
	e. cut and stack only (medium density)	ACRE	4,550.00
	f. cut and stack only (heavy density)	ACRE	4,950.00
	g. cut, chip and remove (light density);	ACRE	5,050.00
	h. cut, chip and remove (moderate density)	ACRE	7,950.00
	i. cut, chip and remove (heavy density)	ACRE	8,250.00
	j. herbicide application to stumps only The scale of this work may vary significantly; therefore, the CONSULTANT must submit a quote to DuPage County Stormwater Management staff for approval prior to work.	PER QUOTE	
	TOTAL SECTION 3		48,550.00
	Grand Total Sections 1-3		76,781.00

GRAND TOTAL SECTIONS 1-3

(In words)

Seventy-six thousand seven hundred eighty-one dollars

NO	ITEM	UOM	PRICE
4	PRESCRIBED BURN		
	a. permit, plan, notifications and administration	SITE	1,750.00
	b. burn implementation <1 acre	SITE	2,000.00
	c. burn implementation 1-5 acres	ACRE	2,000.00
	d. burn implementation >5 acres	ACRE	800.00
5	HAND PULLING/CUTTING VEGETATION		
	a. routine/light to moderate coverage	ACRE	1,450.00
	b. heavy coverage	ACRE	3,450.00
	c. disposal from site The scale of this work may vary significantly; therefore, the CONSULTANT must submit a quote to DuPage County Stormwater staff for approval prior to work.	PER QUOTE	
	d. weeding of formal native plant beds Task will occur 1-2 times per month during the growing season	ACRE	3,850.00
	e. cutting and removal of flower heads (light to routine coverage)	ACRE	825.00
	f. cutting and removal of flower heads (heavy coverage)	ACRE	1,450.00

NO	ITEM	UOM	PRICE
6	MOWING		
	a. tractor/ATV	ACRE	175.00
	b. brush cutter (spot mowing)	ACRE	185.00
7	INSTALLATION OF EROSION CONTROL BLANKET		
	a. S75BN	ACRE	9,500.00
	b. S150BN	ACRE	10,750.00
8	HOURLY RATE SCHEDULE FOR ADDITIONAL SERVICES		
	Project Manager	HOUR	150.00
	Crew Leader	HOUR	125.00
	Restoration Technician	HOUR	67.50