

RESOLUTION NO. 2012-04-019R

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT TO PETITION THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY TO DESIGNATE THE MAHOMET AQUIFER AS A SOLE SOURCE AQUIFER

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

An Intergovernmental Agreement to Petition the United States Environmental Protection Agency to Designate the Mahomet Aquifer as a Sole Source Aquifer, between the City of Urbana, Illinois, the City of Champaign, Illinois, and the Town of Normal, Illinois, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Motion was made by Alderman _____, seconded by Alderman _____ that the Resolution be adopted.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

**INTERGOVERNMENTAL AGREEMENT
TO PETITION U.S. EPA TO DESIGNATE THE MAHOMET AQUIFER AS SOLE
SOURCE AQUIFER**

This is an intergovernmental agreement between the Cities of Champaign, Illinois and Urbana, Illinois and the Town of Normal, Illinois, hereinafter referred to collectively as the “Parties”, to share the costs of evaluating whether the Mahomet Aquifer qualifies for designation as a Sole Source Aquifer by the U.S. Environmental Protection Agency (U.S. EPA) pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, and to share the costs of preparing, processing and supporting a petition to the U.S. EPA seeking such a designation in the event it is determined the Aquifer does qualify for said determination. This process whereby the U.S. EPA determines whether a particular aquifer will be designated a Sole Source Aquifer will hereinafter be referred to as the “Sole Source Aquifer Program.” This Agreement is effective as of the date of its execution by all of the parties hereto.

RECITALS

WHEREAS, the Mahomet Aquifer is the source of drinking water for hundreds of thousands of residents in Central Illinois, and the sole source of drinking water for over eighty separate municipalities; and

WHEREAS, contamination of the Mahomet Aquifer resulting from federally funded projects could have substantial adverse consequences for the economies of communities that rely on the Mahomet Aquifer for drinking water, including those of the parties to this Agreement; and

WHEREAS, some professional experts who have studied the geology of the Mahomet Aquifer, and the Aquifer’s role as a crucial source of drinking water in Central Illinois believe that the Mahomet Aquifer likely qualifies under the criteria of the U.S. EPA for designation as a Sole Source Aquifer; and

WHEREAS, a Sole Source Aquifer designation would provide significant added protections for the Mahomet Aquifer by requiring analysis of any proposed federally funded projects concerning their potential negative impacts on the Aquifer, and by also imposing more rigorous requirements for certain potentially harmful activities under the Illinois Environmental Protection Act, such as more stringent requirements for the siting and design of chemical waste landfills over the Aquifer; and

WHEREAS, the Parties believe it is in their mutual interest to join together in an effort to evaluate whether the Mahomet Aquifer qualifies for a Sole Source Aquifer designation and, if it does, to petition the U.S. EPA for such a designation; and

WHEREAS, such an effort will entail retaining the services of geologists and other experts to perform the necessary technical evaluation, petition preparation and participation in the petition review process before the U.S. EPA, and may including hiring legal counsel to represent the Parties interests in this matter.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth herein, the Parties agree as follows:

Section 1. In General. The purpose of this Agreement is to facilitate a joint effort by the Parties (i) to evaluate whether the Mahomet Aquifer qualifies for a Sole Source Aquifer designation pursuant to the Sole Source Aquifer Program, and, if said evaluation determines that the Aquifer does qualify for such a designation,(ii) to prepare, file and take action to support a petition to the U.S. EPA seeking such a designation. The Agreement prescribes a formula for the sharing of the costs of said efforts among the Parties, and assigns “Lead Agency” responsibilities to the City of Champaign to administer the terms and conditions of the Agreement.

Section 2. Original Parties. The CITY OF CHAMPAIGN, ILLINOIS (Champaign), the CITY OF URBANA, ILLINOIS (Urbana), and the TOWN OF NORMAL, ILLINOIS, (Normal) each will be designated an "Original Party".

Section 3. Additional Parties. Other governmental agencies or not-for-profit organizations may become parties to this Agreement by agreeing to the terms herein. Subsequent parties to this Agreement will contribute financially to these undertakings in a proportionate amount according to the terms provided in this Agreement and will have the same rights and responsibilities as the original parties. Any governmental agency or not-for-profit organization that subsequently becomes a party to this Agreement shall be obligated to pay its proportionate share of all of the costs of any pending proceeding and its proportionate share of any endeavors from that point forward pursuant to the cost sharing formula provided below.

Section 4. Lead Agency. Champaign will be the initial lead agency on behalf of the parties. The Lead Agency may be rotated among the parties as jointly agreed upon by the Administrative Oversight Group as defined below. The Lead Agency will have the following responsibilities:

a. **Contracts for Professional Services.** The Lead Agency will prepare Requests for Proposals or bids regarding and enter into contracts for professional services, utilizing the Lead Agency's contracting procedures, for the following purposes:

1. To evaluate the Mahomet Aquifer to determine if it meets the criteria for a Sole Source Aquifer designation in accordance with the Sole Source Aquifer Program.
2. Upon a determination that the Mahomet Aquifer does meet the criteria of a Sole Source Aquifer, to file a petition and facilitate the processing and support of said petition seeking such a Sole Source Aquifer designation to the point of final decision by the U.S. EPA.

3. To appeal or contest any denial of a Petition seeking a Sole Source Aquifer designation or defend any U.S. EPA approval of a Petition seeking Sole Source Aquifer if another part contests said approval, through any available administrative or judicial means.

b. Supervision and Implementation of Contracts for Professional Services. The Lead Agency shall supervise the professional service providers in the course of performance of the aforementioned services. Such contracts will be entered into as expeditiously as possible in order to meet any applicable statutes of limitation, filing deadlines or other procedural requirements associated with the Sole Source Aquifer program. Any contractual limitations in use of the work product of service providers in these cases will be applicable to other Parties in the same manner as applied to the Lead Agency.

c. Reports. The Lead Agency will cause reports to be sent periodically to the Parties and make available copies of work produced by services purchased under this Agreement.

d. Meetings. The Lead Agency will arrange for meetings of the Administrative Oversight Group, as necessary.

e. New Parties. The Lead Agency will have authority to issue a formal written acceptance of any new party to the Agreement on behalf of all of the current Parties to the Agreement.

Section 5. Administrative Representatives.

a. Administrative Representative Defined / General Powers. Each party to this Agreement shall designate an individual as its Administrative Representative and identify that individual on the signature page of this Agreement. All of the named Administrative Representatives shall collectively constitute and be referred to hereinafter as the

“Administrative Oversight Group”, which will have the authority to act on behalf of the parties to the Agreement in accordance with the procedures set forth in this Section 5.

- b. Each Administrative Representative identified in this Agreement will have the authority to name a replacement Administrative Representative for the party in question, or identify a temporary substitute Administrative Representative for a particular meeting of the Administrative Oversight Group, upon notice by e-mail or letter to the Administrative Representative of the Lead Agency.
- c. Vote Necessary for Specific Actions.
 1. The Administrative Oversight Group is hereby authorized to take the following actions by the affirmative vote of a majority of the current Administrative Representatives:
 - A. Name a new party as the Lead Agency, provided that the party proposed as the new Lead Agency shall vote in the affirmative for such a change.
 - B. Direct the Lead Agency to issue a request for proposals or bids for purposes of procuring professional services deemed necessary to effectively evaluate the Mahomet Aquifer for eligibility as a Sole Source Aquifer and to effectively process a petition to the U.S. EPA seeking such a designation.
 - C. Approve a contract for professional services where the cost of said services does not exceed \$20,000.00.
 - D. Direct the Lead Agency to take appropriate action towards the goal of persuading additional governmental or not-for-profit organizations to participate in the activities authorized by this Agreement.

- E. Direct the Lead Agency to take appropriate action to publicize the activities authorized by this Agreement.
 - F. Determine that a Party to this Agreement is in violation thereof, and authorize notice by the Lead Agency of such violation in accordance with the provisions of Section 8.
2. Approval by a unanimous vote of all Administrative Representatives is necessary to approve a contract for the following:
- A. Professional services for a cost to exceed \$20,000.
 - B. Outside legal counsel.
- c. Remote Attendance, Voting at Meeting. Administrative Representatives are authorized to participate and vote at any meeting of the Administrative Oversight Group remotely by telephone or other similar electronic means of contemporaneous, remote participation that will enable that Administrative Representative to fully participate in any discussion conducted by the Group.
- d. Service of Notice of Actions or Filings. The Lead Agency shall provide each of the designated Administrative Representatives in a timely manner with copies of any notices received from the U.S. EPA regarding the processing of a Petition for a Sole Source Aquifer designation and of any materials filed in such a proceeding.

Section 6. Cost Sharing. Each Party will be proportionately liable for the costs for contractual services retained pursuant to Section 4 and the Lead Agency’s administrative costs as defined below, based upon the relative sizes of each Party’s population as determined by the 2010 Decennial U.S. Census. Each of the party’s populations and respective share of the total costs is shown in the following table.

Municipality	Population	Cost Share based upon Percentage of Total
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		population
Normal	52,497	30.0322650
Champaign	81,055	46.3696067
Urbana	41,250	23.5981281
Total	174,802	100

The Lead Agency shall submit a detailed bill to each Party for its share of the costs of contractual services satisfactorily rendered after Lead Agency receives an invoice identifying those services and costs thereof.

The Lead Agency will be entitled to reimbursement for its own staff time or in house resources provided to support this project at the rate of 10% of the total cost billed by professional service contractors.

Section 7. Payment. Payment for attorney and expert contractual services rendered under this Agreement will be due to the Lead Agency within forty-five (45) days following receipt by each of the participants of an itemized statement of the services performed. Such statement will describe the services rendered.

Section 8. Completion and Termination.

a. Any Party may terminate its participation in this Agreement by giving no less than forty-five (45) days' written notice of the intent to terminate this Agreement. Notice will be considered given when deposited in the United States mail, postage prepaid, and addressed to the City or Town Manager and the City or Town Attorney of the current Lead Agency. Until otherwise provided, such notice will be given as follows:

City Manager
City of Champaign
102 North Neil Street
Champaign, IL 61820

City Attorney
City of Champaign
102 North Neil Street
Champaign, IL 61820

In the event a Party terminates its participation prior to making its final payment for professional services rendered, that Party will pay the Lead Agency its proportionate share of costs for all professional services performed up to the effective date of termination. The Lead Agency will notify all other Parties of the termination of a Party and recalculation of shares of the remaining Parties' costs for services rendered after the termination.

b. In the event the Administrative Oversight Group determines that a Party is in default for a violation of one or more provisions of this Agreement, it will authorize the Lead Agency to serve written notice upon the Party describing the violation(s) constituting said default and stating the intention to terminate the Agreement with respect to said Party unless said default is cured, or satisfactory arrangements are made for the cure of said default, within five days of service of said notice. In addition to any other remedies available at law, the defaulting Party will be liable to the other members for any damages sustained by them based on the default. The terminating Party will pay the Lead Agency its proportionate share of the project costs up to the point of termination.

CITY OF CHAMPAIGN, ILLINOIS

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DATE: _____

Designated Administrative Representative:

Name: _____

Address: _____

Phone: _____

E-Mail: _____

CITY OF URBANA, ILLINOIS

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DATE: _____

Designated Administrative Representative:

Name: _____

Address: _____

Phone: _____

E-Mail: _____

TOWN OF NORMAL, ILLINOIS

By: _____
Town Manager

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

DATE: _____

Designated Administrative Representative:

Name: _____

Address: _____

Phone: _____

E-Mail: _____