

REQUEST FOR QUALIFICATIONS (RFQ)

FOR

**ON-CALL ARCHITECTURE AND ENGINEERING SERVICES FOR THE AIRPORT RESIDENTIAL SOUND INSULATION
PROGRAM**

Specification No. 466569

Required for use by:

**CITY OF CHICAGO
(Chicago Department of Aviation)**



**CITY OF CHICAGO
(Department of Procurement Services)**

All Responses and other communications must be addressed and returned to:

Jamie L. Rhee, Chief Procurement Officer
Attention: Tom Magno, Senior Procurement Specialist
City Hall, Department of Procurement Services, Bid & Bond Room 103
121 N. LaSalle Street
Chicago, Illinois 60602

**ALL RESPONSES MUST BE RECEIVED BY 4:00 P.M., CENTRAL TIME,
ON JULY 10, 2018.**

**RAHM EMANUEL
MAYOR**

**JAMIE L.RHEE
CHIEF PROCUREMENT OFFICER**

SUBMITTAL CHECKLIST

This checklist is provided for ease of review of the Respondent's submittal content; however, it is the responsibility of the Respondent to ensure that all the required material requested in this RFQ is addressed and included in the Respondent's submittal.

Volume I - Required Content

- Cover Letter
- Executive Summary and Associated Information
 - Respondent's Legal Entity Contracting Information
 - Joint Venture Agreement including Schedule B and Disclosures as appropriate
 - LLC Operating Agreement and Disclosures as appropriate
 - Licensing Information
- Company Profile
- Project Understanding and Approach (plus Team Organizational Chart)
- Professional Qualifications and Specialized Experience (plus Project Reference Forms)
- Expertise and Experience of Key Staff/Resumes
- DBE Participation Narrative

Volume II - Required Content

- Conflict of Interests
- Respondent's Corporate History
- Legal Actions Form and other Required Information
- Financial Statements
- Economic Disclosure Statement and Affidavit
- DBE Documentation – SUMMARY
 - Schedule B and JV Agreement, if appropriate
 - Schedule C-3 for each proposed DBE Subcontractor
 - Letter of Certification from City of Chicago for each proposed DBE Subcontractor
 - Schedule D-3
- Evidence of Insurability

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I. GENERAL INFORMATION

The City of Chicago ("**City**"), acting through its Chicago Department of Aviation ("**Department or CDA**"), invites the submission of Qualifications ("**Statement of Qualifications**" or "**SOQs**") for On-Call Architectural and Engineering Services for the Airport Residential Sound Insulation Program. The intent of this Request for Qualifications ("**RFQ**") is to identify qualified Respondents having demonstrated experience, expertise and resources to provide the following services (the "**Services**"): architecture and engineering services. The nature of the work desired from each Group is described in greater detail in the scope of services attached hereto as Exhibit 1 (the "**Scope of Services**").

"Respondent(s)" means the entities that submit Statement of Qualifications ("Submittals") in response to this RFQ. The Respondent(s) awarded an Agreement pursuant to this RFQ, if any, sometimes referred to herein as "**Consultants**". "**Agreement**" refers to a Contract awarded to a Consultant.

Respondent(s) with demonstrated experience in providing the Services identified herein, and with an interest in making these Services available to the City, are free to submit Proposals to this RFQ and any other similar solicitation issued by the City. Respondents are required to identify all resources that will be necessary to complete the Services identified in the Scope of Services.

A. Scope of Service

The Services requested in this RFQ are described more fully in **Exhibit 1, Scope of Services**, of this RFQ.

B. Term of Services

The City intends to award one (1) or more Agreement(s) for each Group pursuant to this RFQ solicitation for a base contract period of five (5) years.

C. Communications; Pre-Submittal Conference; and Document Availability

1. Communications between the City and Respondents

Respondents must communicate only with the Department of Procurement Services ("DPS") regarding this RFQ. All questions or requests for clarification must be submitted to the following e-mail address: CDAbidquestions@cityofchicago.org. The subject line of the email must clearly indicate that the contents are "Questions and Requests for Clarification" about the RFQ, and must refer to "Request for Qualifications (RFQ) for On-Call A/E Services for the Airport RSIP, Specification No. 466569." The specification number must appear in the subject line of the e-mail. No telephone calls will be accepted.

All questions and requests for clarifications must be submitted no later than 4:00 p.m., Central Time, on June 15, 2018 or no response will be provided except at the sole discretion of the Chief of Procurement Officer. A Respondent that deviates from any of these requirements is subject to immediate disqualification from this RFQ process.

2. Pre-Submittal Conference/Site Visit

The City will hold a pre-submittal conference at the Aviation's Administration Building located at 10510 W. Zemke Road, Chicago, Illinois 60666 on June 6, 2018 at 10:00 a.m., Central Time. Attendance is not mandatory however it is strongly encouraged. The City will address questions regarding the RFQ at the pre-submittal conference, and may respond both to questions or requests for clarification submitted on the day of the conference, and to questions submitted prior to the conference date. However,

Respondent may only rely on written addenda and/or clarifications. The City of Chicago accepts no responsibility for timely delivery of materials, and Respondents are solely responsible for acquiring necessary information, addenda and/or materials.

3. **RFQ Document Availability, Information Resources**

Respondents should obtain this RFQ from the Bid & Bond Room 103 located at City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602.

Respondents may request the Bid & Bond Room personnel to mail them a copy of the RFQ by faxing the Bid & Bond Room a completed Federal Express Airbill or make arrangements with Bid & Bond Room personnel to have a package ready for pickup by another courier service. The Bid & Bond Room telephone number is (312) 744-9773. The City accepts no responsibility for the timely delivery of materials.

Alternatively, Respondents may download the RFQ from URL address: www.cityofchicago.org/bids. All Respondents who choose to download the RFQ are responsible for checking this website for clarifications and/or addenda.

If Respondent chooses to download the RFQ document, the Respondent must contact the Bid & Bond Room by faxing a legible copy of Respondent's business card, referencing **Specification No. 466569** to fax number (312) 744-5611 or by calling the Bid & Bond Room at (312) 744-9773 to register Respondent's company as an RFQ document holder, which will better enable Respondent to receive any future clarifications and/or addenda related to this RFQ. Respondents are responsible for obtaining all RFQ materials.

Under no circumstances shall failure to obtain clarifications and/or addenda relieve a Respondent from being bound by any additional terms and conditions set forth in the clarifications and/or addenda, or from considering additional information contained therein in preparing a Statement of Qualifications. Furthermore, failure to obtain any clarification and/or addendum shall not be valid grounds for a protest against award(s) made under this RFQ.

D. Deadline and Procedures for Submitting Statement of Qualifications ("SOQ")

1. Statement of Qualifications must be received by the Bid & Bond Room no later than 4:00 p.m., Central Time, on **July 10, 2018**.
2. The City may not accept submittals that are not received by the date and time set forth in Section I.D.1 above. Only the City's Chief Procurement Officer, at her sole discretion, will determine whether to accept a submittal received after the due date and time.

Failure by a messenger delivery service or printing service to meet the required deadline will not excuse the Respondent from the deadline requirement of this RFQ. Hand-carried Statement of Qualifications must be received in the depository located in the Bid & Bond Room 103 at City Hall. The actual time of the receipt of all Statement of Qualifications to this RFQ will be determined solely by the clock located in the Bid & Bond Room. It is the Respondent's sole responsibility to ensure that the Statement of Qualifications is received as required.

3. The Respondent submittals must be delivered to the following address:
Jamie L. Rhee, Chief Procurement Officer
City Hall - Department of Procurement Services
121 N. LaSalle Street, Bid & Bond Room 103
Chicago, Illinois 60602
Attention: Tom Magno, Senior Procurement Specialist
4. Respondents must submit one (1) original, two (2) paper copies, and fifteen (15) electronic copies of the Statement of Qualifications ("SOQ") on USB Flash Drive in PDF format. The electronic (PDF) version of the submittal must be in the form of a bound file per Volume containing all sections of the SOQ. Each USB Flash Drive should contain both Volumes of the SOQ. The original SOQ must be clearly marked as "ORIGINAL" and on all documents, requiring a signature must bear the original signature of Respondent's authorized signatory. Respondent must enclose all documents in sealed envelopes or boxes. Respondents must submit their SOQs enclosed sealed envelopes, packages, or boxes, and addressed to the City of Chicago, Department of Procurement Services, Bid & Bond Room 103, City Hall, 121 N. LaSalle Street, Chicago, IL 60602. Statement of Qualifications packages in boxes must be dropped off in the Bid & Bond Room for date/time stamp during regular hours, 8:30 a.m. to 4:30 p.m. Central Time, Monday through Friday (except legal Holidays) prior to the date and time advertised. The Bid & Bond Room can be reached at (312) 744-3002 between the hours of 8:30 a.m. to 4:30 p.m., Central Time, Monday through Friday (excluding holidays).

5. The outside of each sealed envelope or box must be labeled as follows:

Statement of Qualifications Enclosed
RFQ for On-Call A/E Services for the Airport RSIP
Specification No. 466569

Due: 4:00 p.m., Central Time, **July 10, 2018**

Submitted by: _____
(Name of Respondent)

Package ____ of ____

The City's opening of Respondent's sealed envelope(s) or package(s) containing a SOQ shall neither be deemed nor constitute acceptance by the City of Respondent's SOQ. The City reserves the right to open and inspect all such sealed envelope(s) or package(s), regardless if the same were submitted by the due date and time specified herein, for any purpose, including without limitation, determining the particular RFQ to which Respondent has responded, determining if a SOQ was submitted by the date and time specified in this RFQ, and in order to determine a Respondent's return address.

E. Procurement Timetable

The timetable for the selection process is summarized below. Note that these target dates are subject to change by the City.

Advertisement of Request for Qualifications.....	May 23, 2018
Pre-Submittal Conference	June 6, 2018
Question Cut-Off Date.....	June 15, 2018
Statement of Qualifications Due.....	July 10, 2018

F. Conflicts of Interests

For the purposes of this Section the term "Respondents" shall mean the entities that submit SOQs in response to this RFQ and, if Respondent is a joint venture or limited liability company, any partner in the joint venture or any member of the limited liability company. For the purposes of this section, the following definitions apply:

- "PM/CM" means a joint venture by CMC Partners which is comprised of Cotter Consulting, Inc., Millhouse Engineering & Construction, Inc., and 2iM Group, LLC, and which provides program management and construction management services for the RSIP.

Respondents will be subject to the following conflicts of interest rules:

1. The PM/CM ("Ineligible Party") is not eligible for consideration for award of an Agreement and may not participate on the Agreement as a subcontractor.
2. If Respondent is a subcontractor of the Ineligible Party (Covered Entity #2), Respondent will be ineligible for consideration for award of an Agreement as a Consultant unless the Respondent's SOQ contains a letter stating the Respondent will terminate its role as a Covered Entity #2 if the Respondent is awarded a contract.
3. If Respondent proposes to use as one of its subcontractors any Covered Entity #2 as described above, Respondent must comply with the requirements set forth below to be eligible for consideration for award of an Agreement.
 - a. The Covered Entity #2 shall have no management role whatsoever in the Respondent; and
 - b. The Covered Entity #2 shall have no beneficial interest whatsoever in the Respondent; and
 - c. Respondent's SOQ shall propose to use Covered Entities #2 on no more than forty-nine percent (49%) of all Services under an Agreement; and
 - d. Respondent must provide an accurate and complete description of the conflict of interest and the measures the Respondent proposes to mitigate the effects of the conflict of interest.

The CPO will make the determination of eligibility in his/her sole judgment based upon the requirements set forth above. The CPO's determination adverse to the Respondent shall be final unless the Respondent's SOQ contains a letter from the Covered Entity #2 agreeing to withdraw from Respondent's team in the event of such an adverse determination.

4A. If Respondent is an entity that has an Affiliated Relationship (as defined below), Respondent will be ineligible for consideration for award of an Agreement as a Consultant but may provide Services as a subcontractor in accordance with Section 3 above.

For purposes of this section, an "Affiliated Relationship" exists if the Respondent and the Ineligible Party or any subcontractor of the Ineligible Party (Covered Entity #3) have any common ownership, whether directly or indirectly (including, without limitation, if they are subsidiaries of the same parent company); however, if any institutional investor owns less than

10% of both the Respondent and the Covered Entity # 3, such ownership will not render the relationship between the Respondent and the Covered Entity #3 an Affiliated Relationship.

4B. If Respondent proposes to use any subcontractor that has an Affiliated Relationship with a Covered Entity #3, the Respondent must comply with the requirements set forth below to be eligible for consideration for award of an Agreement.

- a. The Covered Entity #3 shall have no management role whatsoever in the Respondent; and
- b. The Covered Entity #3 shall have no beneficial interest whatsoever in the Respondent; and
- c. Respondent's SOQ shall propose to use Covered Entities #3 on no more than forty-nine percent (49%) of all Services under an Agreement; and
- d. Respondent must provide an accurate and complete description of the conflict or apparent conflict and the measures that the Respondent proposes to mitigate the effects of the conflict.

The CPO will make the determination of eligibility in his/her sole judgment based upon the requirements set forth above. The CPO's determination adverse to the Respondent shall be final unless the Respondent's SOQ contains a letter from the Covered Entity #3 agreeing to withdraw from Respondent's team in the event of such an adverse determination.

The City reserves the right to evaluate potential conflicts of interests, if any, not set forth above that could present a conflict in the performance of the Services. With respect to the evaluation of potential conflicts of interest, the City also reserves the right to render a final decision on the eligibility of a particular Respondent to be considered for an award of an Agreement, all in a manner consistent with the best interests of the City.

G. Respondents will be subject to the following conflicts of interest rules:

Conflict of Interest: The Evaluation Committee ("EC") will consider any information regarding Respondent, including information contained in Respondent's Proposal, that may indicate any conflicts (or potential conflicts) of interest which might compromise Respondent's ability to successfully perform the proposed Services or undermine the integrity of the competitive-procurement process. If any Respondent has provided any services for the City in researching, consulting, advising, drafting or reviewing this RFQ or any other services related to this RFQ, such Respondent may be disqualified from further consideration.

II. REQUIRED INFORMATION

Each SOQ must contain all of the following documents and must conform to the following requirements:

A. Format

Hard copies of the SOQ responding to this RFQ should be prepared using a font no smaller than 12 point on 8 1/2" X 11" letter size paper (preferably recycled), printed double-sided and bound on the long side. The City encourages using reusable, recycled, recyclable and chlorine-free printed materials for Statement of Qualifications, reports, and all other documents prepared in connection with this RFQ. Expensive papers and bindings are discouraged as no materials will be returned. One page equals one side of content (e.g. printing on both sides of an 8-1/2" x 11"

piece of paper equals two pages).

Statement of Qualification must be submitted in two separately-bound volumes. The first volume must contain the Respondent's Statement of Qualifications and must be labeled "*Volume I, Statement of Qualifications*"; the second volume must contain representations and certifications as described herein and must be labeled "*Volume II, Representations and Certifications*".

Each separate volume and individual sections should be clearly identified and/or separated by labeled tabs and organized in accordance with subject matter sequence as set forth below.

The electronic version of the SOQ must, to the extent practicable, mimic the structure required for the hard copies (Original and Copies).

B. Volume I – Statement of Qualifications – Required Content

Respondents are advised to adhere to the submittal requirements of this RFQ. Failure to comply with the instructions of this RFQ, including but not limited to the page limitations set forth below, may be cause for rejection of the non-compliant submittal. Submission of a SOQ constitutes the Respondent's acceptance of all requirements outlined in the RFQ. By submitting a response to this RFQ, Respondent acknowledges that if its SOQ is accepted by the City, its SOQ and related submittals may become part of the Agreement.

The SOQ must include the following information:

1. Cover Letter – limit of three (3) pages

Respondent must submit a cover letter, signed by an authorized Respondent representative, committing Respondent to providing the Services in accordance with its SOQ and the terms and conditions of any Agreement, which may be awarded pursuant to this RFQ.

2. Executive Summary – limit of three (3) pages

Respondent must provide an executive summary, which addresses the following information:

A. Outline the number of years Respondent has been in business and identify Respondent's legal name, its headquarters address, its principal place of business, its legal form (i.e., corporation, joint venture, partnership, etc.), the names of its principals or partners, and whether Respondent is authorized to do business in the State of Illinois. If Respondent is a business entity comprised of more than one (1) legal entity, Respondent must identify all legal entities so comprising Respondent; it must identify each entity's respective ownership percentage of Respondent; and Respondent must summarize the role, degree of involvement and experience of each such separate entity;

B. Indicate the name, mailing address, email address, and telephone number(s) of the principal contact for oral presentation or negotiations;

C. Explain its understanding of the City's intent and objectives and its approach to achieving those objectives;

- D. Provide a brief summary of the qualifications, experience and background of the team and its committed Key Personnel (as herein defined);
- E. Summarize Respondent's commitment to comply with the DBE requirements as stated in the Special Conditions Regarding Disadvantaged Business Enterprise Commitment and Schedules, attached to this RFQ as **Exhibit 3, Sample Professional Services Contract**; and
- F. Respondent must identify any exceptions or objections it has to the City's Sample Professional Services Contract ("Contract"), a copy of which is attached hereto Exhibit 3 of this RFQ. Note that the City may from time to time revise this Contract. The City will not accept or entertain any exceptions or objections to the Contract at any time after receiving the submittal except and only to the extent the City subsequently makes a material change to a substantive provision of the Agreement.

3. **Company Profile – limit of one (1) page (plus any attachments required by the provisions below)**

Respondents must briefly describe their legal structure and the way in which their business is organized.

If Respondent is a joint venture, attach a copy of the joint venture agreement signed by an authorized officer of each joint venture partner must be attached. Each joint venture partner must execute:

- a) Schedule B as shown in **Exhibit 4** if Respondent's joint venture team includes certified DBE/NON-DBE firm(s), as applicable; and
- b) A Separate Online Economic Disclosure Statement and Affidavits ("EDS") for each joint venture partner. Instructions for filing online EDS are included in this RFQ.

If Respondent is a limited liability company, a copy of the operating agreement signed by an authorized member or manager of the limited liability company must be attached. Each member of the limited liability company must execute a separate Online EDS.

Note that the EDS Certificate of Filing forms should be placed in Volume II of the SOQ.

4. **Project Understanding and Approach – limit of ten (10) pages plus a Team Organizational Chart**

Respondent must describe its interest, understanding and approach to providing Services for the Project. Respondent must include an explanation of its approach to management. Also to be included are: a plan for implementing and monitoring the Services; organizational chart showing the relationship between all team-member firms; the roles and responsibilities of team-member firms; strategies, tools and safeguards for ensuring timely, quality performance of all required Services; equipment, software and hardware considerations; training and on-going support; and any additional factors for the City's consideration.

Any subcontractors who will be performing Services on this Project, including their designation as DBE, should be listed along with discussion of their roles and responsibilities.

Describe the Respondent's approach to Quality Management (Quality Assurance Plan and Quality Control Procedures or QA/QC), specifically to this Project. The Respondent must address the following items in regards to QA/QC:

- a. Provide details on corporate management's QA/QC process.
- b. Provide the name of the Respondent's QA/QC Manager and their qualifications.
- c. Describe how costs are allocated to QA/QC as it relates to the overall budget.

The organizational chart may be printed on 11"x17" paper as long as the 11"x17" paper is not loose (must be bound to the rest of the volume) and is folded to fit within the confines of the volume (8-1/2" x 11").

5. Professional Qualifications, Capabilities, Resources, and Specialized Experience – limit of three (3) pages plus ten (10) pages for Project Reference Forms

Respondents must describe their qualifications and specialized experience necessary to provide the Services. This description should include similar experience at other airports or in managing similar programs. This description should also include the proposed organizational structure, lists of key personnel and description of all personnel who will provide the Services. Regarding prior similar experiences, highlight key issues faced and innovative solutions used.

Respondent must also provide the information on the Project Reference Form (copy attached). One Project Reference Form is required for each referenced project. Project Reference Form may be modified for presentation purposes, but must include all requested information; there is no page limit for individual projects; however, the maximum total for all projects is ten pages and no more than one project may be included on any Project Reference Form.

6. Professional Qualifications, Specialized Experience and Local Availability of Key Personnel Committed to this Project - limit of three (3) pages plus a Staff Organization chart plus Resumes

- a. In three (3) pages or less, Respondent must describe the professional qualifications and experience of the Key Personnel who will be dedicated to providing the Services on the Project. Respondent must provide an organization chart identifying, at a minimum, identifying the Key Personnel who will participate in the major components of the Project.

Respondent must indicate each proposed person's areas of expertise, and which person will have prime responsibility for various tasks or aspects of the Project. All Key Personnel must have significant and relevant experience in the area for which they are proposed to provide Services.

- b. Respondent must indicate the local availability and time that each Key Personnel would be dedicated to this Project.
- c. Respondent must submit resumes or corporate personnel profiles of all staff (maximum two pages per individual) which demonstrate relevant past experience for each proposed staff member and Key Personnel.

d. Copies of the appropriate licenses and/or certifications do not count against the page restrictions for this section.

7. DBE Participation Plan and Commitment – limit of five (5) pages

Respondents are directed to examine the attached Special Conditions Regarding Disadvantaged Business Enterprise ("DBE") found in Exhibit 4. Consultant agrees to abide by Task Order Request details, which will include the required level of DBE participation. If the Respondent is joint venturing with a DBE firm, then the Respondent must submit a fully executed Schedule B and a copy of the joint venture agreement. Respondents are required to provide with their responses a written statement of its commitment to achieving the DBE participation goals of the Total Dollar Value of all Task Orders awarded. Respondents are not required to complete the Schedule D-3 and C-3 documents for this RFQ submission.

C. Volume II – Representations and Certifications – Required Content

1. Conflict of Interests

If applicable, Respondent must provide a statement and information regarding conflicts of interest required pursuant to Section I.G.

2. Respondent's Corporate History

Respondent must provide a chronological history of all mergers and/or acquisitions (if any) involving the Respondent and each legal entity comprising Respondent, including all present and former subsidiaries or divisions and any material restructuring activities, if applicable. Include any such forthcoming actions, if such disclosure has already been made generally available to the public and is permitted by law.

3. Legal Actions

Respondent, or each separate legal entity comprising Respondent, if applicable, must provide a listing and a brief description of all material legal actions, together with any fines and penalties, for the past five (5) years in which (a) Respondent any division, subsidiary or parent company of Respondent, or each separate legal entity comprising Respondent, or (b) any member or partner of Respondent, if Respondent is a business entity other than a corporation, has been:

- a) a debtor in bankruptcy;
- b) a defendant in a legal action for deficient performance under a contract, in violation of a statute or related to service reliability;
- c) a respondent in an administrative action for deficient performance on a project , in violation of a statute or related to service reliability;
- d) a defendant in any criminal action;
- e) a named insured of an insurance policy for which the insurer has paid a claim related to deficient performance under a contract, in violation of a statute or related to service reliability;
- f) a principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to deficient performance under a contract, in violation of a statute or related to service reliability; or
- g) a defendant or respondent in a governmental inquiry or action regarding the accuracy of prepared financial statements or disclosure documents.

4. Business License/Authority to do Business in Illinois

Respondent must provide copies of appropriate licenses or certifications required of any individual or entity performing Services described in this RFP (or RFQ) in the City of Chicago, County of Cook and State of Illinois for itself, its partners and its subcontractors, including evidence that the Respondent is authorized by the Secretary of State to do business in the State of Illinois. If Respondent is not currently "doing business" in Illinois at the time of submission, it is not required to show corporate good standing in Illinois with the proposal (or qualifications); Respondent should so indicate, and provide evidence of good standing for its state of organization, and primary state of operation, if different. Corporate good standing in Illinois will be required for award of any contract.

5. Financial Statements

Respondent must provide a copy of its **audited** financial statements for the last 3 years. Respondents that are comprised of more than one entity must include financial statements for each entity. The City will accept one complete set of financial statements on USB Flash drive instead of multiple hardcopies if the content is voluminous for the period requested, but will not accept a web link. Respondents are required to provide required financial statements in sufficient detail for the City to assess its financial condition as part of their submission. The City reserves the right to accept or reject any financial documentation other than the financial statements requested by this section.

6. Economic Disclosure Statement and Affidavit ("Disclosure Affidavit")

Respondent, or each separate legal entity comprising Respondent, if applicable, must submit an on-line completed and executed Disclosure Affidavit (see Section VIII of this RFQ). If the Respondent is a business entity other than a corporation, then each member or partner of the Respondent must complete an on-line Disclosure Affidavit. In addition, any entity that has an interest in the Respondent or in one or more of its members or partners and is required pursuant to the Municipal Purchasing Act for Cities of 500,000 or More Population (65 ILCS 5/8-10-8.5) ("**Municipal Purchasing Act**") or Chapter 2-154 of the Municipal Code of Chicago to provide a disclosure must submit a completed and executed Disclosure Affidavit (EDS) as an "entity holding an interest in an Applicant" as described in the Disclosure Affidavit. All affidavits must be notarized.

Subcontractors do not have to submit a Disclosure Affidavit at the time of submitting a Statement of Qualifications but may be required to do so by the City at a later date.

7. DBE Documentation

Respondent should describe its plan for DBE participation and commitment to achieving meaningful technical and financial goals. The current DBE participation goal is **30%** of the total contract value. Consistent with the City's practice of encouraging and facilitating the participation of DBEs in prime contractor roles on City projects, the City urges Respondents to partner with a DBE firms at the prime contractor level. If including DBEs as joint venture partners, DBEs must have well-defined management roles and responsibilities for the DBE team members and must allocate to the DBE financial risk commensurate with the financial rewards available to be achieved by a successful Respondent.

Respondents must comply with the Special Conditions Regarding Disadvantaged Business Enterprise Commitment attached as **Exhibit 4**. Failure to comply with this requirement may result in disqualification from this RFQ process.

If the Respondent is joint venturing with a DBE firm then the Respondent must submit a fully executed Schedule B and a copy of the joint-venture agreement.

8. Insurance

Respondents are **NOT** required to submit evidence of insurance with the Statement of Qualifications but must submit evidence of insurability with their SOQ's indicating that if awarded an Agreement the Respondent will provide evidence of insurance in the amounts specified in **Exhibit 5** to the Agreement. Prior to award of an Agreement, the Respondent selected to perform the Services must submit evidence of insurance in the amounts specified and in the form provided in **Exhibit 5** to the Agreement. If Respondent is a joint venture or limited liability company the evidence of insurability and evidence of insurance, if awarded an Agreement, must be in the name of the joint venture or limited-liability company.

III. EVALUATION OF SUBMITTALS

A. Evaluation Committee and Short-listing Process

An Evaluation Committee ("EC"), which may include representatives of the Chicago Department of Aviation, DPS, and other City departments, will review and evaluate the SOQs. The City reserves the right to enlist independent consultants to assist with the evaluation of all or any portion of the submittals, as it deems necessary. The EC will first assess the Respondent's compliance with and adherence to all Volume I and Volume II of the submittal requirements. Any incomplete submittal with missing key components necessary to fully evaluate the response may, at the discretion of the CPO, be rejected from further consideration due to "non-responsiveness" and rated Non-Responsive.

The EC will then evaluate the extent to which a Response meets the requirements set forth in the RFQ, including but not limited to a detailed analysis of Volumes I and II of the Response. The focus of the evaluations will be on the Respondent's approach and methodology, qualifications, experience, proposed implementation plan, and other factors based on the evaluation criteria outlined in this section. The EC may also review any other information that is available to it, including but not limited to information gained by checking references and by investigating the Respondent's financial condition.

The City reserves the right to seek clarification of any information that is submitted by any Respondent in any portion of its submittal or to request additional information at any time during the evaluation process. Any material misrepresentation made by a Respondent may void the Response and eliminate the Respondent from further consideration.

After the EC completes its review of Statement of Qualifications, it may submit to the Commissioner of the Chicago Department of Aviation (the "**Commissioner**"):

- (1) a recommended short list of Respondents for further consideration;
- (2) a recommendation to select one or more Respondent(s); or
- (3) a recommendation to reject any or all Statement of Qualifications.

If the EC submits a short list of Respondents for further review, then, in the sole discretion of the Commissioner, those short-listed Respondents may be required to provide additional information, be subject to a site visit and/or, be invited to appear before the EC for an oral interview, to clarify in more detail information submitted in a Statement of Qualifications and/or to ask Respondent to

respond to additional questions. The format of the oral interviews may require short-listed Respondents to respond to technical questions presented in advance of or at the time of the interview.

If the City elects to conduct oral interviews, the short-listed Respondents must be available to participate in these interviews including, at a minimum, the proposed Key Personnel. The proposed Key Personnel must be prepared to address the subjects and requirements for these Services.

The EC will then make a final evaluation and will submit a recommendation for one or more Respondents to the Commissioner. If the Commissioner concurs with the selection recommendation from the EC, the Commissioner will forward such concurrence and recommendation to the CPO for authorization to enter into contract negotiations with the selected Respondent(s).

The City will require the selected Respondent(s) to participate in contract negotiations, including but not limited to negotiations regarding compensation. The City's requirement that the selected Respondent negotiate is not a commitment by the City to award an Agreement, nor is such requirement an opportunity for Respondent to take exception or objection to any part of the Agreement, which it did not take exception or objection to as allowed in this RFQ. If the City determines that it is unable to reach an acceptable Agreement with a selected Respondent, including failure to agree on a fair and reasonable compensation for the Services or any other terms or conditions, the City may initiate negotiations with one or more Respondents and may terminate negotiations with such selected Respondent, and may commence negotiations with any of the other Respondent(s) until such time as the City has negotiated an Agreement or multiple Agreements meeting its needs.

The City reserves the right, after advertisement of the RFP, to refine the scope of services, with appropriate notice. Further, if, upon receipt of proposals, the City wishes to make refinements to the scope of services, it may, depending upon the circumstances, provide the revision to all Respondents and invite revised proposals from the Respondents based upon the revised scope of services.

B. Evaluation Criteria with Weights

The City will review the Respondent's Statement of Qualifications using the following criteria:

1.	Qualifications: Ability to provide and capacity to perform the Services described in Exhibit 1, Scope of Services, and Section II.B., above; Respondent's professional qualifications, capabilities, resources, and specialized experience on projects of similar scope, complexity, and magnitude; Completeness and comprehensiveness of Respondent's Response to this RFQ, compliance with the submittal requirements, and all applicable local, City, State and Federal laws, ordinances and statutes, and requirements including required disclosures and certifications.	40%
2.	Key Staff: Technical and professional competence as evidenced by Respondent's professional qualifications, specialized experience and local availability of Key Personnel; Outcome of oral interviews including technical analysis and presentation (if requested by the City).	30%
3.	Proposed Management Approach:	30%

	Respondent's project understanding, approach, implementation plan, management techniques, required expertise and resources designed to facilitate effective decision-making, stakeholder coordination and control, and approach to Quality Management; preference will be given to firms with significant experience and knowledge of all components of the Services required per Exhibit 1, Scope of Services of this RFQ.	
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IV. CONFIDENTIALITY AND PUBLIC INFORMATION

Respondents may designate those portions of a response, which contain trade secrets, or other proprietary data ("Data") which Respondent desires remain confidential. If a Respondent includes Data that is not to be disclosed to the public for any purpose or used by the City except for evaluation purposes, the Respondent must:

- A. Mark the title page as follows: "This submittal includes trade secrets or other proprietary Data that may not be disclosed outside the City and may not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this Statement of Qualifications. The City, for purposes of this provision, will include any consultants assisting in the evaluation of the Statement of Qualifications. If, however, an Agreement is awarded to this Respondent as a result of or in connection with the submission of this Data, the City has the right to duplicate, use or disclose the Data to the extent provided in the resulting Agreement. This restriction does not limit the City's right to use information contained in the Data if it is obtained from another source without restriction. The Data subject to this restriction are contained in sheets (insert page numbers or other identification)."
- B. Mark each sheet or Data to be restricted with the following legend:
"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this Statement of Qualifications."
- C. Provide a USB Flash drive with a redacted copy of the entire Proposal or submission in .pdf format for posting on the City's website. Respondent is responsible for properly and adequately redacting any Data which Respondent desires remain confidential. If entire pages or sections are removed, they must be represented by a page indicating that the page or section has been redacted. Failure to provide a USB Flash Drive with a redacted copy may result in the posting of an un-redacted copy.
- D. Provide a written explanation of the basis under which each redacted item has been deemed confidential, making reference to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).
- E. Indiscriminate labeling of material as "Confidential" may be grounds for deeming a Statement of Qualifications as non-responsive.
- F. **All SOQs submitted to the City in response to this RFQ are subject to the Illinois Freedom of Information Act.** The City will make the final determination as to whether the information will be disclosed pursuant to a request under the Freedom of Information Act or valid subpoena. Respondent agrees not to pursue any cause of action against the City with regard to disclosure of this information.
- G. Consistent with the City's practice of making available all information submitted in response to a public procurement all Statement of Qualifications, any information and documentation contained therein, any additional information or documentation submitted to the City as part of this RFQ, and

any information or documentation presented to City as part of the negotiation of an Agreement will be made publicly available through a website hosted by the City. Data will only remain confidential if Respondent has marked the documents containing such data in the manner required by this Section IV.

V. ADDITIONAL DETAILS OF THE RFQ PROCESS

A. Addenda

If it becomes necessary to revise or expand upon any part of this RFQ, an addendum will be sent to all of the prospective Respondents listed on the "Specification Take-Out-Sheet" prior to the due date. Prospective Respondents are automatically included on the Specification Take-Out Sheet when they sign for a copy of the RFQ package in the Bid and Bond Room, request that the Bid and Bond Room personnel mail them a copy, or download the RFQ document per the instructions and requirements in Section I.C.3 above. Each addendum is incorporated as part of the RFQ documents, and receipt must be acknowledged by the prospective Respondents in the Cover Letter of their submittals or as otherwise directed herein.

The addendum may include, but will not be limited to, the following:

- A change of the Response due date;
- Clarifications to Respondents questions; and
- Terms and conditions the City anticipates will be included in the final signed contract.

B. City's Rights to Reject Submittals (SOQ)

The City is under no obligation to award an Agreement pursuant to this RFQ and, acting through the CPO, reserves the right to reject any and all Statement of Qualifications. The City reserves the right to use any other procurement method available under applicable law to obtain the Services described herein.

C. No Liability for Costs

The City is not responsible for any costs or damages incurred by Respondents, its team member(s), subcontractors or other interested parties in connection with the RFQ process, including but not limited to costs associated with preparing the Statement of Qualifications, and/or participation in any conferences, oral presentations or negotiations.

D. Debriefing

If any Respondent requests a debriefing in writing, it may be granted at the discretion of the CPO only after the award of the Contract. **No EC member will individually debrief a Respondent at any time.**

VI. **LEGAL ACTIONS**

Please provide the information below. If the answer to any of the questions is "Yes", provide a brief description or explanation on a separate sheet.

Question	Yes	No
1. Has the firm or venture been issued a notice of default on any contract awarded in the last three years?		
1. Does the firm or venture have any judgments, claims (liquidated damages, or other), arbitration proceedings or suits pending or outstanding against the firm or venture or its officers? If yes, include the dollar amount of claims or judgments and the contract value of the contract on which the claim was filed. Attach explanation on separate page(s).		
3. Within the past three years, has the firm or venture been a party to any lawsuits or arbitration proceedings with regard to any contracts?		
4. Within the last three years, has any officer or principal of the firm or venture ever been an officer or principal of another organization that failed to complete any contract as a result of termination, litigation, arbitration or similar matter?		
5. Has any key person with the firm or venture or its predecessor ever been convicted of or charged with any state or federal crime (excluding traffic violations), including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, criminal anti-trust violations, bid rigging or bid-rotating?		
6. Has the firm or venture ever been temporarily or permanently debarred from a contract awarded by any federal, state, or local agency?		
7. Within the last three years, has the firm or venture been assessed penalties for any statutory or administrative violations, including MBE, WBE, DBE and/or EEO?		
8. Has the firm or venture ever failed to complete any work awarded to it?		

VII. ECONOMIC DISCLOSURE STATEMENT (“EDS”) AND AFFIDAVIT AND APPENDIX A – EDS ONLINE INSTRUCTIONS

INSTRUCTIONS FOR COMPLETING ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT (EDS) ON-LINE

The Respondent shall complete an online EDS prior to the Response due date. At the discretion of the CDA, a Respondent who does not file an electronic EDS prior to the Response due date, may be found non-responsive and its Response rejected.

If you are unable to complete the online EDS and print a Certificate of Filing prior to the Response due date, the City will accept a paper EDS provided written justification is provided explaining the Respondent's good faith efforts to complete it before the Response due date and the reasons why it could not be completed.

1.1. ONLINE EDS FILING REQUIRED PRIOR TO BID OPENING

The Respondent must complete an online EDS prior to the bid opening date.

A Respondent that does not file an electronic EDS prior to the Response due date will be found non-responsive and its Response will be rejected unless a paper EDS and written justification is submitted with the Response as explained in the above paragraph).

1.2. ONLINE EDS WEB LINK

The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>.

1.3. ONLINE EDS NUMBER

Upon completion of the online EDS submission process, the Respondent will be provided an EDS number. Respondent should provide this number here:

EDS Number: _____

1.4. ONLINE EDS CERTIFICATION OF FILING

Upon completion of the online submission process, the Respondent will be able to print a hard copy Certificate of Filing. The Respondent should submit the signed Certificate of Filing with its bid. Please insert your Certification of Filing following this page.

A Respondent that does not include a signed Certificate of Filing with its bid must provide it upon the request of the Chief Procurement Officer.

Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

1.5. PREPARATION CHECKLIST FOR REGISTRATION

To expedite and ease your registration process, we recommend that you collect the following information prior to registering for an Online EDS user account:

	1. Invitation number, if you were provided an invitation number.
	2. EDS document from previous years, if available.
	3. Email address to correspond with the Online EDS system.
	4. Company Information: a. Legal Name
	b. FEIN/SSN
	c. City of Chicago Vendor Number, if available.
	d. Address and phone number information that you would like to appear on your EDS documents.
	e. EDS Captain. Check for an EDS Captain in your company - this maybe the person that usually submits EDS for your company, or the first person that registers for your company.

1.6. PREPARATION CHECKLIST FOR EDS SUBMISSION

To expedite and ease your EDS submission, we recommend that you collect the following information prior to updating your EDS information online.

Items #1 through #7 are needed for both EDS information updates and contract related EDS documents:

- _____ 1. Invitation number, if you were provided with an invitation number.
- _____ 2. Site address that is specific to this EDS.
- _____ 3. Contact that is responsible for this EDS.
- _____ 4. EDS document from previous years, if available.
- _____ 5. Ownership structure, and if applicable, owners' company information:
 - _____ a. % of ownership
 - _____ b. Legal Name
 - _____ c. FEIN/SSN
 - _____ d. City of Chicago Vendor Number, if available.
 - _____ e. Address

- _____ 6. List of directors, officers, titleholders, etc. (if applicable).
- _____ 7. For partnerships/LLC/LLP/Joint ventures, etc.:
 - _____ a. List of controlling parties (if applicable).

Items #8 and #9 are needed ONLY for contract related EDS documents:

- _____ 8. Contract related information (if applicable):
 - _____ a. City of Chicago contract package
 - _____ b. Cover page of City of Chicago bid/solicitation package
 - _____ c. If EDS is related to a mod, then cover page of your current contract with the City.
- _____ 9. List of subcontractors and retained parties:
 - _____ a. Name
 - _____ b. Address
 - _____ c. Fees – Estimated or paid

1.7. EDS FREQUENTLY ASKED QUESTIONS

Q: Where do I file?

A: The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

Q: How do I get help?

A: If there is a question mark on a page or next to a field, click on the question mark for help filling out the page or field. You may also consult the User Manual and the Training Videos available on the left menu.

Q: Why do I have to submit an EDS?

A: The Economic Disclosure Statement (EDS) is required of applicants making an application to the City for action requiring City Council, City department or other City agency approval. For example, all bidders seeking a City contract are required to submit an EDS. Through the EDS, applicants make disclosures required by State law and City ordinances and certify compliance with various laws and ordinances. An EDS is also required of certain parties related to the applicant, such as owners and controlling parties.

Q: Who is the Applicant?

A: "Applicant" means any entity or person making an application to the City for action requiring City Council or other City agency approval. The applicant does not include owners and parent companies.

Q: Who is the Disclosing Party?

A: "Disclosing Party" means any entity or person submitting an EDS. This includes owners and parent companies

Q: What is an entity or legal entity?

A: "Entity" or "Legal Entity" means a legal entity (for example, a corporation, partnership, joint venture, limited liability company or trust).

Q: What is a person for purposes of the EDS?

A: "Person" means a human being.

Q: Who must submit an EDS?

A. An EDS must be submitted in any of the following three circumstances:

Applicants:	An Applicant must always file this EDS. If the Applicant is a legal entity, state the full name of that legal entity. If the Applicant is a person acting on his/her own behalf, state his/her name.
Entities holding an interest:	Whenever a legal entity has a beneficial interest (E. G. direct or indirect ownership) of more than 7.5% in the Applicant, each such legal entity must file an EDS on its own behalf.
Controlling entities:	Whenever a Disclosing Party is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture that has a general partner, managing member, manager or other entity that can control the day-to-day management of the Disclosing Party, that entity must also file an EDS on its own behalf. Each entity with a beneficial interest of more than 7.5% in the controlling entity must also file an EDS on its own behalf.

Q: What information is needed to submit an EDS?

A: The information contained in the Preparation Checklist for EDS submission.

Q: I don't have a user ID & password. Can I still submit an Online EDS?

A: No. You must register and create a user ID and password before submitting an Online EDS

Q: What information is needed to request a user ID & password for Online EDS?

A: The information contained in the Preparation Checklist for Registration is needed to request a login for the Online EDS.

Q: I already have a username and password from another City web site (City Web Portal, Department of Construction and Permits, Department of Consumer Services, etc.). Can I log-in the Online EDS with that account?

A: Usually not. The Online EDS uses a user ID and password system that is shared by the Public Vehicle Advertising and Water Payment web sites. You may use a username and password from those sites by answering "Yes" to "Is this an existing City of Chicago user ID?" when registering. Other usernames and passwords will not be automatically recognized. However, you may choose to create

an identical username for the Online EDS if it is not already taken.

Q: I don't have an email address. How do I submit an Online EDS?

A: You cannot get an account to submit an online EDS without an email address. If you need an e-mail address, we suggest that you use a free internet email provider such as www.hotmail.com or www.yahoo.com or rnail.google.com to open an account. The City does not endorse any particular free internet email provider. Public computers are available at all Chicago Public Library branches.

Q: I forgot my user ID. Can I register again?

A: No. If you are the EDS Captain of your organization, please contact the Department of Procurement Services at 312-744-4900. If you are an EDS team member, contact your EDS Captain, who can look up your user ID.

Q: Who is the EDS Captain?

A: The EDS Captain is a person who performs certain administrative functions for an organization which files an EDS. Each organization registered with the Online EDS has at least one EDS Captain. There may be co-captains, who are all equal. EDS Captains approve new users, change contact information for an organization, and de-active accounts of employees who have left the organization. Please see the User Manual for more information.

Q: Why do we need EDS Captains?

A: The Online EDS is designed to be a self-service web application which allows those doing or seeking to do business with the City to perform as many routine functions as possible without City intervention. Because many organizations have multiple staff filing an EDS, the EDS Captain role allows those organizations to self-manage the contact information and users.

Q: Who is the EDS team?

A: The EDS team for an organization is everyone who is registered to file an EDS on behalf of the organization.

Q: I forgot my password. What should I do?

A: To retrieve a temporary password, click the "Forgot your password?" link on the login page. Enter your user ID that you provided when you registered your account. The system will automatically generate a temporary password and send it to you. When you log-in with your temporary password, you will be asked to create a new password.

Q: How do I complete an Online EDS?

A: Click on "Create New" after logging in. The Online EDS system will walk you through the EDS questions. Please see the User Manual for details.

Q: How do I fill out a Disclosure of Retained Parties?

A: There is no longer a separate Disclosure of Retained Parties filing. After logging in, click on "Create New". Answer (click) "Contract" to "Is this EDS for a contract or an EDS information update?" Click "Fill out EDS", and click on the "Retained Parties" tab. When finished, click on "Ready to Submit."

Q: How do I attach documents?

A: Attachments are discouraged. If at all possible, please provide a concise explanation in the space provided in the online form. Attachments with pages of officers are not acceptable. Names of officers must be typed into the system. If you must provide an attachment for another reason, please send it to your City of Chicago contact (contract administrator or negotiator for procurements) and they will attach it for you. Documents can be sent in PDF (preferred), Word, or paper format.

Q: Who can complete an Economic Disclosure Statement online?

A: Any authorized representative of your business with a user ID and password can complete your EDS online. One person, such as an assistant, can fill in the information and save it, and another person can review and electronically sign the Online EDS.

Q: What are the benefits of filing my Economic Disclosure statement electronically?

A: Filing electronically reduces the chance of filing an incomplete EDS and speeds up the processing of contract awards. A certificate of filing can be printed at the completion of the process and inserted into your bid package. The biggest benefit for those who frequently do business with the City is that after the first EDS, each EDS is much easier to fill out because non-contract specific information is pre-filled from the last submitted EDS.

Q: Will my information be secure?

A: Yes. When making your internet connection to our Web Server, you will connect through a Secure Socket Layer (SSL for short) to the “Online EDS” login page. All information you type will be protected using strong encryption. Within the login page, you will provide us with a user ID, password, and secret question for user authentication, only you will have knowledge of this unique identification information.

Q: I am filing electronically. How do I sign my EDS?

A: Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

Q: My address has changed. How can I update my information?

A: You must be an EDS Captain for your organization to update this. Log-in and click on “Vendor Admin, Site Administration.” Select the appropriate site and click edit.

Q: I have more questions. How can I contact the Department of Procurement Services?

A: Please contact the contract administrator or negotiator assigned to your solicitation or contract. You may call DPS at 312-744-4900 between 8:30 AM and 5:00 PM Central Time.

Q: Can I save a partially complete EDS?

A: Yes. Click “Save”. To avoid data loss, we recommend you save your work periodically while filling out

your EDS.

Q: Do I have to re-type my information each time I submit an EDS?

A: No. The system will remember non-contract specific information from your last submitted EDS for one year. This information will be filled-in for you in your new EDS. You will have an opportunity to correct it if it has changed since your last filing. When you submit your new EDS, the information is saved and the one-year clock begins running anew.

Q: What are the system requirements to use the Online EDS?

A: The following are minimum requirements to use the Online EDS:

- A PDF viewer such as Adobe Reader is installed and your web browser is configured to display PDFs automatically. You may download and install Adobe Reader free at www.adobe.com/products/reader/
- Your web browser is set to permit running of JavaScript.
- Your web browser allows cookies to be set for this site. Please note that while we use cookies in the Online EDS, we do not use them to track personally identifiable information, so your privacy is maintained.
- Your monitor resolution is set to a minimum of 1024 x 768.
- While not required to submit an EDS, if you wish to view the training videos, you must have Adobe Flash Plugin version 9 or higher, speakers, and sound. Please note that very old computers may not be able to run Adobe Flash and will not be able to play the training videos. In that case, we encourage you to seek help using the Online EDS Manuals. You may download and install Adobe Flash Plugin free at <http://get.adobe.com/flashplayer>

The Online EDS has been tested on Internet Explorer 6.0 and 7.0 and Firefox 2.0 and 3.0 on Windows XIP and Mac OS X. Although it should work on other browsers and operating systems, the City of Chicago cannot guarantee compatibility.

VIII. PROJECT REFERENCE FORM

Respondent must provide comprehensive information for at least three (3) projects of similar type, scope and magnitude as required pursuant to this RFQ. If any of these projects can be reviewed on-line, please provide the URL for such project. Respondent must provide detail about each project referenced, including a brief description of the project, the date on which the project was performed and completed, the location of the project, the nature and extent of Respondent's involvement in the project, the total dollar value of the project, the Key Personnel involved and their roles in the project, and three (3) client references for the project(s). The Respondent must be able to demonstrate completion of the projects identified.

Experience will not be considered unless complete reference data is provided (name, position, phone number and e-mail address).

REFERENCES:

Project Description:

Date of Performance: _____

Date of Completion: _____

Project Location: _____

Respondent's Involvement in Project: _____

Dollar Value of Project and Your Firm's Contract Value: _____

Key Personnel Involved and Role in Project: _____

Client References (provide three):

Name: _____ Title: _____

Address: _____

Telephone: _____ E-Mail: _____

Name: _____ Title: _____

Address: _____

Telephone: _____ E-Mail: _____

Name: _____ Title: _____

Address: _____

Telephone: _____ E-Mail: _____

Exhibit 1: Scope of Services

SCOPE OF SERVICES

GENERAL SCOPE OF SERVICES

The City of Chicago ("City"), through its Chicago Department of Aviation ("CDA"), is strongly committed to its Residential Sound Insulation Program (referred to herein as "RSIP" or "Program"), which aims to reduce the impact of significant aircraft noise in homes surrounding Chicago O'Hare International Airport ("O'Hare") and Chicago Midway International Airport ("Midway"). The CDA began voluntary residential sound insulation work in neighborhoods surrounding O'Hare in 1995 as a ten-home demonstration program, and in neighborhoods surrounding Midway in 1996 as a second ten-home demonstration program. To date, the CDA has sound-insulated over 10,900 homes near O'Hare with approximately 2,200 homes remaining in the current noise contour, and sound-insulated over 10,100 homes near Midway with approximately 1,600 homes remaining in the current noise contour. Based on future noise contours yet to be prepared by the CDA and approved by the Federal Aviation Administration ("FAA"), the number of remaining (i.e., eligible) homes may increase. Consultant shall not construe the remaining or future number of eligible homes as a minimum guarantee of future work, as participation in the Program is at the discretion of each homeowner. The CDA provides all sound insulation labor and materials through various contracts at no cost to the eligible homeowners.

This scope outlines the architectural and, engineering ("A/E") design and consulting services required by the CDA for the RSIP for O'Hare and Midway. The O'Hare Noise Compatibility Commission and the Midway Noise Compatibility Commission ("the Commissions") establish eligibility criteria (which include FAA eligibility criteria) for residential sound insulation near O'Hare and Midway respectively; the two Commissions are independent and implement similar, but not identical, policies. The CDA enforces the Commissions' rules for eligibility and performs all sound insulation work through various contractors. The CDA works closely with the Department of Procurement Services ("DPS") and the Department of Law ("DOL") to procure all sound insulation contracts and complete the work according to the contract documents. The CDA utilizes a program management/construction management consultant ("PM/CM") for daily implementation of the Program. All residential sound insulation funding is paid by the CDA via various airport financing mechanisms including, but not limited to, airport revenue bonds, passenger facility charges ("PFCs"), and Airport Improvement Program ("AIP") grants from the FAA.

All O'Hare sound insulation work is currently based on the OMP Build-Out Noise Contour, an FAA-approved noise contour that anticipates future noise impacts at O'Hare upon build-out of all runways contemplated under the O'Hare Modernization Program ("OMP"), a milestone currently scheduled for the year 2021. All Midway sound insulation work is currently based on the Midway 2018 Noise Contour, an FAA-approved noise contour that anticipates future noise impacts at Midway in the year 2018. The CDA anticipates preparing another O'Hare noise contour upon OMP Build-Out and another Midway noise contour around 2018 in order to determine whether additional homes require noise mitigation. Remaining homes eligible for the O'Hare RSIP are located predominantly in six communities, including but not limited to, Chicago, Park Ridge, Rosemont, Schiller Park, Bensenville, and Wood Dale. Among the remaining homes eligible for the O'Hare RSIP, there may be some homes of historic significance in the Norwood Park Historic District that have not enrolled in previous RSIP phases. Remaining homes eligible for the Midway RSIP are located in two communities, including but not limited to, Chicago and unincorporated Cook County (Stickney Township). Consultant shall never make eligibility determinations in performing the Services, as the CDA determines eligibility in the RSIP for all homes. Throughout this Scope of Services, the term "home" is used interchangeably with "dwelling unit", and the term "homeowner" is used interchangeably with "participant" and "customer".

The CDA may provide RSIP office space at the O'Hare Aviation Administration Building ("AAB", which is O'Hare Building 804, 10510 W. Zemke Road, Chicago IL 60666) or equivalent.

DETAILED SCOPE OF SERVICES

The services to be provided include on-call A/E design and Consulting Services for the O'Hare and Midway RSIP ("Services"). Under this scope, the CDA is requesting five years of Services. During this time period, the sound insulation work will ebb and flow at the direction of the CDA, and the CDA will require Consultant to implement a staffing plan based on scalability, which is the idea of scaling the staffing levels up and down for all positions as needed on a regular basis to perform the A/E work. The Services are described in more detail below but are not

necessarily limited to the items listed below. In performing the Services, Consultant must cooperate fully with other City of Chicago departments, the planning firm(s) providing airport noise consulting services, the firm(s) providing program management and construction management consulting services ("PM/CM"), construction contractors ("contractors") and subcontractors, material suppliers, manufacturers, the FAA, the Illinois Historic Preservation Agency ("IHPA"), local community building departments, and the Commissions as may be needed at the sole discretion of the Commissioner. The term "review" as used below generally means "review and provide written comment regarding..."

Consultant must perform all of the required Services in a satisfactory manner consistent with the CDA's standards of performance. Such Services pertain to residential facilities and will be determined on an as-needed basis and as described in this scope of work. Services may include, but are not limited to: architectural planning, computer-aided design and drafting ("CADD"), specifying, reviewing, management and administration from project design through construction. Consultant may be required to provide Services to address open issues from past Program phases, even if such Services were originally provided by another A/E firm. Consultant will be responsible for professional and technical accuracy, completeness and competence of all designs, drawings, specifications, design calculations, and all other work or materials furnished to the Commissioner.

1. FULL DISCIPLINE TEAM

The RSIP is essentially a home remodeling program relying on acoustical treatments to mitigate aircraft noise. Consultant must include as part of its team all disciplines necessary to support a project from design through construction, including specialized subconsultants who are City-approved to perform services in fields as required by the project. For the RSIP, the ratio of architectural work to engineering work is approximately 93% to 7%. Consultant's team should include the mechanical engineering, electrical engineering, and structural engineering disciplines. At least one team member must have experience with historic preservation of homes, and at least one team member must be Leadership in Energy and Environmental Design ("LEED")-accredited. Consultant is responsible for the coordination of all members of its team. Consultant shall be aware that, based on the type and scope of each RSIP phase, not all phases may require a full discipline team, however, in all cases, Consultant is required to meet the Disadvantaged Business Enterprise ("DBE") participation requirement for each phase. Consultant shall assign and maintain Key Personnel in accordance with Section II,B.6 of this Agreement. Four professional staff will comprise the Key Personnel: Principal, Project Manager, Senior Architect, and Project Architect. Work experience in residential architecture is highly desired. Key Personnel roles and responsibilities are generally described below. As the project workload will fluctuate throughout the duration of this Agreement, staff levels are expected to be adjusted to meet the current Program schedule. No personnel is expected to be retained for the purpose of providing Services full-time throughout the duration of the project.

- A. The Principal serves in an advisory capacity only and is an executive level professional responsible for contract compliance, building Consultant team, providing corporate support, maintaining the continuity and professionalism of the team, and ensuring completion of Consultant deliverables to the CDA. Reports to the CDA.
- B. The Project Manager must be a licensed architect responsible for monitoring daily operations of the team and performing a final review of all deliverables. Serves as the principal liaison to the CDA Contract Manager. Reports to the CDA.
- C. The Senior Architect must be a licensed architect responsible for signing off on all submittals, specifications and product pre-approval, conducting building code inquiries and providing interpretation, and overseeing deliverables. Conducts site visits and issues related reports. Assures work is accurate through Quality Assurance and Quality Control ("QA/QC") procedures and provides guidance and support to the Project Architect. Reports to the Project Manager.
- D. The Project Architect is a professional responsible for training and supervising a team of architectural interns, initial submittal review, specifications updates, and building code and new product research. Serves as the daily contact for coordination of architectural intern assignments and all deliverables. Must have a degree in architecture, but does not need to be a licensed architect. Reports to the Project Manager and the CDA.

The remaining Consultant staff should include, but is not limited to, one or more architectural interns, mechanical engineers, electrical engineers, structural engineers, a historic preservation specialist, and administrative assistants. Any changes to Key Personnel or a change in classification status for any RSIP staffer requires prior

approval by the Commissioner.

2. DESIGN PHASE SERVICES

The CDA expects Consultant to:

- A. Initiate inquiries into local codes and ordinances as they pertain to the RSIP work and attend meetings, as needed, with the building departments of the communities surrounding O'Hare, including, but not limited to: Bensenville, Chicago, unincorporated Cook County (Leyden Township, Norwood Park Township), Des Plaines, unincorporated DuPage County (Addison Township), Norridge, Park Ridge, Rosemont, Schiller Park, and Wood Dale; and the communities surrounding Midway, including, but not limited to: Chicago and unincorporated Cook County (Stickney Township). Provide a report of the findings of building code, zoning ordinance, and permit requirements of each applicable community. Review and interpret building code and propose RSIP Master Technical Specifications ("Master Specifications") updates, if applicable, to the CDA and the PM/CM. Develop and provide Program specific materials that would help architectural interns and the PM/CM identify and apply solutions to potential building code issues.
- B. Develop and/or maintain a Training Procedure Manual for architectural interns outlining home inventory appointment ("home inventory"), construction modification ("construction mod" or "mod"), and field measurement appointment ("field measurement") procedures.
- C. Develop and/or update the RSIP Standard for Construction Modification Packages ("mod standard"), Mechanical and Electrical Shop Drawing Checklist, and any other materials that would help architectural interns and/or the PM/CM staff during the home inventories or field measurements.
- D. Maintain a book of Line Item Photographs that is current at all times and would not require major effort to update in time for home inventories and/or field measurements.
- E. Attend at least one Homeowner Briefing where the RSIP procedures are conveyed to the prospective Program participants. In addition to the Project Architect and each architectural intern who will be performing home inventories, the Project Manager and Senior Architect must attend one Homeowner Briefing at the beginning of each phase, even if those staff have attended such briefings in prior years.
- F. Prepare Home Inventories: The first formal visit to any home eligible for the RSIP is called the home inventory. The PM/CM schedules all home inventories. An architectural intern, or a PM/CM acoustical technician, conducts all home inventories. The CDA expects Consultant to:
 - i. Assign sufficient architectural interns to complete home inventories and construction mods for all homes in each phase. Consultant will be required to staff the Program to meet the current Program schedule which may be adjusted at any time throughout the project. This means that Consultant must have the ability to increase or decrease staffing levels to correspond to the schedule. It will be Consultant's sole responsibility to determine when staffing must be increased or decreased. All staffing changes must be approved by the CDA Project Manager. Architectural interns are to be retained only for the purpose of attending a homeowner briefing, conducting home inventories, creating construction mods, and attending field measurements – Consultant should be prepared for breaks in the flow of home inventories and periods of no activity between the homeowner briefing, home inventory and field measurement phases. In order to ensure uniformity in training, all field training of architectural interns must be performed by the Project Architect and in accordance with the Training Procedure Manual for architectural interns created and/or maintained by Consultant.
 - ii. During the home inventory, discuss treatment options with the homeowner, sketch a floor plan of the home, create door and window schedules using an existing, RSIP-specific, Microsoft Visual Basic-based application indicating both the existing conditions and homeowner's treatment choices, inventory the Heating, Ventilation and Air Conditioning ("HVAC") and electrical systems, print Microsoft Excel ("Excel") homeowner sign-offs, and take digital photographs of each home's elevations for inclusion in the construction mods. Assume that the normal pace of home inventories is three inventories per day per architectural intern. Experienced interns can conduct four inventories per day if at least two inventories are in the same multi-unit building.
 - iii. At the home inventory, note potential building code or structural issues that would affect RSIP work and deliver to the CDA and the PM/CM details of Consultant's findings within two business days, but no later than 48 business hours of the home inventory. Provide

recommended solutions to the encountered issues, and recommend a modification to the Master Specifications for future use, if necessitated by the field conditions.

G. Create Construction Modifications: After the home inventory, Consultant shall assemble and deliver to the PM/CM construction mod packages. The CDA expects Consultant to:

- i. Create Autodesk AutoCAD LT ("AutoCAD") floor plan drawings based on the home inventory sketch and assemble construction mod packages for all homes in the phase that have been inventoried by architectural interns or the PM/CM. This work includes updating any existing construction mods if they were already prepared by another A/E firm. A construction mod package consists of a door and window schedule, HVAC and electrical system inventory, a hand-drafted sketch and basic AutoCAD drawing of the home's floor plans, and digital photographs of the home's elevations.
- ii. Deliver one paper copy of each construction mod package to the PM/CM, and upload electronic versions of the inventories in Excel and floor plan drawings in both AutoCAD and portable document format ("PDF") to the CDA's shared network drive for the RSIP. Deliver and upload construction mod packages on an ongoing basis and no later than 21 business days after the home inventory.
- iii. Prepare all construction mods in a uniform format and in accordance with the established mod standard. The Project Architect must review every construction mod for accuracy and consistency with the mod standard prior to submittal to the PM/CM. The PM/CM may request mod revisions if the mods do not meet the mod standard requirements or do not show compliance with the Program requirements.
- iv. For construction contract bidding purposes, the PM/CM will provide a list of homes assigned to each future construction contract. Based on the list, Consultant will provide to the PM/CM a master Excel door and window schedule that includes a total number of all inventoried doors and windows per construction contract via a method specified by the PM/CM.
- v. The CDA intends to receive 100% quantities identified on construction mods before bidding the construction contracts. The CDA will declare a homeowner enrollment cut-off date for each construction contract.

H. Update and maintain Master Specifications: Consultant is required to utilize the existing RSIP design and construction standards in Construction Specifications Institute ("CSI") MasterFormat for writing and transmitting all Master Specifications. New or customized specification sections not currently included in the CSI MasterFormat must be developed utilizing the CSI MasterFormat. Typical RSIP construction contract bid documents consist of Part One, Instructions and Execution Documents; Part Two, General Conditions; and Part Three, Technical Specifications. When preparing construction contract bid documents, the City and the PM/CM will be responsible for Part One and Two, although the Commissioner may request assistance from Consultant regarding Parts One and Two. Consultant will be responsible for Part Three. Part Three consists of unit price descriptions, technical specifications, and detail drawings. Consultant will maintain and update the current Master Specifications to the latest CSI MasterFormat edition (currently CSI MasterFormat 2016 edition). These updates will include all modifications due to field experiences on recent contracts, availability of new manufacturers based on currently specified performance requirements, change in building code requirements, and change in Program option packages or scope, among others. The Master Specifications must be updated through the term of each RSIP phase when modifications are identified and should not require major effort to update in order to bid additional construction contracts. The Master Specifications will be issued as construction contract Part Three, Technical Specifications in order to advertise for construction contract bids and will include the products and details required to construct the approved sound insulation option packages, including those for homes of historic importance.

- i. The CDA expects Consultant to:
 1. Address building code and energy code conflicts as necessary;
 2. Incorporate additional sustainable design measures if practicable;
 3. Keep abreast of industry standard and building code changes and availability of new products that meet the specification criteria;
 4. Keep abreast of CSI MasterFormat updates, inform the CDA immediately of any such updates, and initiate changes to the specification sections to reflect the latest version of CSI MasterFormat;
 5. Initiate requests to manufacturers to provide submittals to pre-approve materials, and submit vetted manufacturers to the CDA and the PM/CM for final review prior to

listing these manufacturers in the Master Specifications and adding them to the pre-approved materials log and library; and

6. Conduct a comprehensive review of all specification sections to ensure consistent formatting, language, and general continuity.
7. Tailor the Master Specifications to each construction contract bid package to only include the unit price descriptions, products, and details applicable to that particular bid package.

- ii. Create the unit price descriptions and technical specifications portion of the Master Specifications utilizing Microsoft Word ("Word"). Create the detail drawings portion of the Master Specifications utilizing AutoCAD. Convert those Word and AutoCAD files to PDF files utilizing Adobe Acrobat.
- iii. Deliver electronic versions of the unit price descriptions and technical specifications in Word and PDF and electronic versions of the details in AutoCAD and PDF to the PM/CM via a method specified by the PM/CM.
- iv. Document all Master Specifications changes in the Specifications Change Log. This log is kept and maintained by the CDA and shall be used by Consultant and the PM/CM to communicate specification change requests. Prior to making revisions to the Master Specifications, Consultant must request the Master Specifications and the Specifications Change Log from the CDA, document revisions, and return the log along with the updated Master Specifications to the CDA. Consultant must coordinate all changes with the CDA and the PM/CM.

E. Review and respond to PM/CM's Requests for Clarification ("RFC") within two business days, but no later than 48 business hours of receipt of each request. Consultant may receive RFCs during the design or construction phase.

3. CONSTRUCTION PHASE SERVICES

The CDA expects Consultant to:

- A. Review Product Submittals: Consultant shall review product submittals from construction contractor(s) for conformance to the construction contract documents within three business days of receipt, as follows:
 - i. Review and action submittals in accordance with the Shop Drawings, Product Data and Samples section of the construction contract General Conditions. Maintain a log of submittal requirements by specification section and the status of each submittal (i.e. approved, resubmit, etc.) in accordance with the Submittal Procedures section of the construction contract Technical Specifications. The log should be updated before each construction contract award to reflect the most current submittal requirements. The log should include a box next to the section title that must be checked when all submittals for that section have been received and approved. Consultant must attach a copy of the log to all submittals that are returned to the PM/CM. At Consultant's request, the PM/CM's acoustical staff will assist in the review of the acoustical test reports.
 - ii. Review and action material substitution requests submitted by the construction contractor(s) in accordance with the Substitution Procedures section of the construction contract Technical Specifications and the Quality of Workmanship, Equipment and Materials section of the construction contract General Conditions.
- B. Participate in Field Measurements: The second formal visit to any home eligible for the RSIP is called the field measurement. The PM/CM schedules all field measurements. The PM/CM conducts all field measurements, but Consultant and the construction contractor must attend and participate in each field measurement. The CDA expects Consultant to:
 - iii. Assign sufficient architectural interns to attend field measurements for all homes in the project. Assume that one architectural intern per construction contract team will be needed for the duration of the field measurements. Typically, there is one field measurement team per construction contract, but there could be two field measurement teams per construction contract.
 - iv. Attend all field measurements to verify tempered glass, window restrictor, and threshold height requirements, to record existing mechanical and electrical conditions and modifications proposed by the construction contractor, as well as to verify the field accuracy of the construction mods. Typically, field measurements proceed at a pace of not more than ten appointments per day per team.

- v. Investigate pre-existing field conditions that would require a clarification to the Master Specifications and deliver to the CDA and the PM/CM recommended solutions and details of Consultant's findings within two business days, but no later than 48 business hours of the field measurement. The CDA and/or PM/CM may also request that Consultant recommend a modification to the Master Specifications for future use, if necessitated by field conditions.
- C. Review Mechanical and Electrical Shop Drawings: Consultant shall review design/build mechanical/electrical shop drawings ("shop drawings") submitted by the construction contractor to ensure conformance with the construction contract Technical Specifications and Program scope. In addition, Consultant will verify that the mechanical and electrical line items submitted with the shop drawings are complete and accurate and in conformance with the Mechanical and Electrical Shop Drawing Checklist that is completed during the field measurements. Consultant must utilize Wrightsoft Right-J, which is the approved RSIP computer software for HVAC load calculations, to verify all HVAC load calculations submitted by the construction contractor.
 - vi. Review shop drawings within four business days of receipt. Mechanical and electrical shop drawings are submitted within 10 business days of the field measurement appointment for each home receiving air conditioning. Typically, approximately 2% to 15% of O'Hare and about 25% to 30% of Midway single-family homes and townhomes receive air conditioning.
 - vii. Review and action submittals in accordance with the Shop Drawings, Product Data and Samples section of the construction contract General Conditions.
 - viii. Prior to the submittal of shop drawings, the PM/CM will schedule meetings at the RSIP offices between Consultant's mechanical and electrical engineer and each mechanical and electrical construction subcontractor to review and interpret the submittal requirements and the output of Wrightsoft Right-J.
- D. Review and respond to construction contractor's Requests for Information within one business day, but no later than 24 business hours of receipt of each request.
- E. Conduct construction site visits, as needed, within one business day, but no later than 24 business hours of request by the PM/CM to investigate and determine solutions to issues caused by pre-existing field conditions affecting sound insulation work. These site visits may require a Senior Architect, a structural engineer, a mechanical engineer, an electrical engineer, and/or a historic preservation specialist. Consultant's project team should include at least one professional in each of these disciplines. Within two business days, but no later than 48 business hours of any site visit, create and submit a report, including details of work to be performed, in order to solve the problems identified at the home. Typically, approximately two to five homes per construction contract require a site visit. Site visits are typically requested during the construction period but may be requested at any time during each RSIP phase.

4. DELIVERABLES

Submit a status report of all deliverables to the CDA Project Manager on a weekly basis. All deliverables are subject to review and approval by the Commissioner and the PM/CM.

In performing its Services, Consultant must prepare, assist in the preparation of, provide or review deliverables and provide follow-up, including, but not limited to, various written studies, design documents, design manuals, contract drawings, documents submitted for permit, CADD drawings, technical specifications, charts, diagrams, preliminary and underlying data, and other documents and information necessary for performance of the Services ("Deliverables").

The Commissioner reserves the right to reject any and all Deliverables, which in the sole opinion of the Commissioner do not adequately represent the intended level of completion or standards of performance; do not include relevant or accurate information or data; or do not include all documents specified or reasonably necessary for the purpose for which the Agreement or individual project was made with Consultant or for which the CDA intends to use the Deliverables. Rejected Deliverables must be revised, at Consultant's cost, and resubmitted with the appropriate level of information to bring the project up to the appropriate level, and must indicate the level of effort for revising the rejected documents and demonstrate how the project will be kept on track.

All documents created and modified under this Agreement become the property of the City of Chicago.

5. EQUIPMENT REQUIREMENTS

Consultant may use equipment that the CDA previously purchased and dedicated to the RSIP and deems to be in good working order. The PM/CM will assign this equipment to Consultant's staff. Consultant must provide sufficient architectural interns.

Each architectural intern creating construction mods will require a laptop computer with a docking station, Microsoft Office, AutoCAD LT, and Adobe Acrobat Standard. Each architectural intern performing home inventories will require a laptop computer with a docking station, Microsoft Office, a portable printer, and a device capable of taking digital photographs with a minimum eight megapixel resolution. In the event that the CDA has a shortage of available and operable equipment, the CDA may request that Consultant purchase additional hardware and software for which Consultant may request reimbursement. The CDA will not reimburse Consultant for home office computers, software or equipment. The CDA will not reimburse for any purchase of cameras, and those should not be included in Consultant's proposal.

CDA requirements for purchasing equipment:

- A. All equipment purchased pursuant to this Agreement shall become the property of the City and shall be turned over to the CDA upon the expiration or termination of the Agreement. Consultant must provide an asset inventory log documenting all assets acquired under the Agreement to CDA or the PM/CM. The CDA or the PM/CM will maintain asset inventories of all equipment, computer hardware, and computer software assigned to Consultant.
- B. All purchases of computer equipment under this Agreement must be made in accordance with the latest City of Chicago Department of Innovation and Technology ("DoIT") directives and shall meet DoIT's quality and compatibility standards for such equipment.
- C. All computers purchased under the Agreement will utilize an operating platform as specified by the City.
- D. When computer hardware and/or software is purchased, Consultant will install only the operating platform. Consultant will turn over all hardware and/or software to the CDA or the PM/CM for installation of anti-virus software and all other software.
- E. All software licenses are to be purchased by Consultant (or Consultant's subconsultants) on compact disc where possible; Consultant shall avoid software purchases on the Internet to the greatest extent practicable as downloaded software becomes an intangible asset and difficult to manage.
- F. All software purchased under and pursuant to the Agreement must reside on field office desktop or laptop computers owned by the City. At no time will Consultant install software purchased under the Agreement on home office computers.

6. MISCELLANEOUS

- A. QA/QC Plan and Procedures: Consultant shall have QA/QC procedures currently in place for the firm's own in-house design process which shall address the following, at a minimum: management responsibility, design standards and documents, document control, process control, and standard of care. The firm's QA/QC plan must be submitted to the CDA as part of the proposal for this RFQ.
- B. Meetings: Consultant must attend meetings with representatives of the CDA and City and other involved and interested agencies as may be required.
- C. Time Frame for Program: The Services described above will be performed expeditiously. The time for completion of each phase of services will be stipulated by the CDA and/or the PM/CM.
- D. Errors and Omissions: The CDA has a committee that reviews every project for alleged errors and omissions that Consultant may have made in the preparation of the design and Deliverables. The committee's procedures include conducting internal reviews of alleged errors or omissions and to provide a written analysis of its review to Consultant. The committee will give Consultant an opportunity to respond to the review, in writing. If the City determines that Consultant's project contained errors and omissions, as alleged, the committee will meet with Consultant in an attempt to resolve the issues.

Sustainable Design: As part of the Commissioner's goal to incorporate environmentally sustainable design in building and infrastructure improvements, each design consultant and design management team is required to

provide a staff member with a LEED professional credential to assist with design. In entering into an Agreement with Consultant, the City may rely on Consultant's representation that at least one of the Key Personnel possesses a current LEED professional credential issued by the U.S. Green Building Council ("USGBC"). It is strongly encouraged by the CDA that all Consultant's staff be LEED-accredited. A copy of the LEED professional credential(s) must be provided to the CDA upon request. Consultant must maintain at least one of the following Key Personnel with current LEED accreditation through the duration of this Agreement: Project Manager, Senior Architect, and/or Project Architect. Consultant must reference the CDA Sustainable Airport Manual ("SAM"), latest edition, evaluate all available options, and make formal design recommendations to the CDA for approval. Consultant must then implement and oversee the measures approved by the CDA. Consultant shall implement best management practices for each project, subject to approval by the City. The SAM is available on the Internet at: <http://www.airportsgoinggreen.org/sustainable-airport-manual.aspx>

Exhibit 2: Schedule of Compensation

SCHEDULE OF COMPENSATION

1. PROJECT BUDGETS

- a. Consultant shall submit a budget for each sound insulation project as described in Exhibit 1, including the allowable and allocable costs described below in the Compensation section. City will not consider or approve annual budgets for the Services described under this Agreement. The rates for any approved staff added after a project has started shall be negotiated and within the limits of the existing negotiated rates at that time.
 - i. Consultant and City shall agree to a staffing plan and direct costs to develop each project's budget. For each project budget, Consultant and City must agree on a "not-to-exceed" amount for allowable labor and direct costs. Each budget's not-to-exceed amount may only be adjusted with prior City approval and may be renegotiated (increased or decreased as appropriate) if City has changed the scope and/or duration of work for that project.
 - ii. As requested by City, Consultant must present and report to City in person on the status of each project, including but not limited to the scope; schedule; budget and deviations therefrom; costs versus percent of work completed by homes and percent of work completed by dollars; and staffing plan. Any projected cost increases from the approved budget(s) must be explained and approved by City in writing. Any adjustments to the budget or staffing plan proposed by Consultant must receive prior written approval by City.
 - iii. Consultant and City shall also negotiate a corresponding fixed fee for each project, determining appropriate performance-based milestones, and a milestone payout schedule. The fixed fee is a fixed amount including profit, willingness to serve, and assumption of responsibility; should be estimated only from the sum of the labor, overhead, and burden; and must be reasonable and fair. City reserves the right to request data supporting Consultant's determination of the fixed fee. A project's fixed fee may only be renegotiated if the scope of work has changed.
 - iv. Project budgets and any revisions must be agreed to by the Chicago Department of Aviation ("CDA") and Consultant, approved by the CDA, and shall be incorporated into this Agreement without the need for a formal amendment.

2. COMPENSATION

Consultant will be compensated for the Services based on actual costs plus a fixed fee. Allowability and allocability of costs will be determined in accordance with the terms and conditions of this Agreement. As further described below, compensation will consist of: the actual cost of labor (not to exceed the direct hourly labor rates per position/title); overhead and burden (including but not limited to payroll-related taxes, insurance, and fringe benefits); fixed fee; certain direct costs; and Subconsultant costs. Direct costs and Subconsultant costs incurred by Consultant are reimbursable without mark-up of any kind by Consultant including, but not limited to, Consultant's administrative costs.

- a. **Labor Costs.** Labor costs will consist of the actual costs of all allowable and allocable salaries and wages (exclusive of overtime premiums and payroll-related taxes, insurance, and fringe benefits) paid to Consultant's employees for the time spent in the performance of Services under this Agreement (collectively, "Labor Costs"). Labor Costs associated with Consultant's principals for administrative tasks are not billable. Principals may bill for their hours for non-administrative tasks directly applicable to the Services only by request and prior approval of City. All personnel is expected to provide and bill for Services on a strict as-needed basis.
- b. **Direct Hourly Labor Rates.** Consultant shall submit a comprehensive list of all job classifications for five (5) years required to deliver the Services described in Exhibit 1 and corresponding calendar year

maximum Direct Hourly Labor Rates (see Attachment A to this Exhibit 2). Consultant's detailed staffing plan will list individuals and their actual corresponding Direct Hourly Labor Rates. **Each calendar year Direct Hourly Labor Rate is a true ceiling; all individuals within a certain job classification are not automatically entitled to the maximum Direct Hourly Labor Rate.**

- i. **Salaried Employees.** Consultant shall calculate the hourly labor rate for salaried employees by dividing the base annual salary by 2080 hours. These individuals, however, may not bill more than 8 hours per day, or 40 hours per week. The maximum number of hours billable per employee will be based on the actual work hours in a calendar year (2080, 2088, or 2096) less paid time off ("PTO") including, but not limited to, vacation, holidays, sick days, and furlough days for that individual. Consultant's salaried employees are professionals and are expected to complete all assigned tasks regardless of how many hours are required.
- ii. **Hourly Employees.** The hourly labor rate for hourly employees shall reflect an annualized salary divided by 2080 or the actual hourly rate paid (as approved by City and not to exceed the calendar year Direct Hourly Labor Rate for that job classification). In no circumstances may an hourly employee bill more than 40 hours per week and his or her corresponding annual maximum billable hours, unless previously authorized in writing by the Commissioner.
- iii. **Classification Rate Increases.** Upon request by Consultant, job classifications and the corresponding calendar year maximum Direct Hourly Labor Rates may be adjusted on an annual basis at City's discretion. However, any such adjustment in rates shall not increase rates by more than 4% each year or the Consumer Price Index for All Urban Consumers ("CPI-U") for the Chicago-Gary-Kenosha area, whichever is lower.
- iv. **Distribution of Classification Rate Increases.** Consultant may choose how to allocate any increases granted in accordance with subparagraph iii above. Any merit based raises for specific individuals must be submitted via new Status Rate Change Approval Forms and approved by City. However, the absolute dollar amount distributed cannot exceed the aggregate dollar increase approved via the classification rate increase as described in subparagraph iii above.

- c. **Overhead and Burden Rates.** "Overhead" includes the non-payroll indirect costs of the home and branch offices of Consultant which are allowable and allocable to the Services (including but not limited to rent, home office utilities, professional and commercial liability insurance, etc.). "Burden" includes payroll-related costs (including but not limited to payroll-related taxes, employee health insurance, and fringe benefits). The Overhead and Burden rates applicable to Consultant employees who perform Services in relation to this Agreement shall be Consultant's audited rates in accordance with the Federal Acquisition Regulation ("FAR"). Consultant must provide evidence of approval of the Overhead and Burden rate on a yearly basis.
 - i. **Limitation on Overhead and Burden.** The combined rates for Overhead and Burden may not exceed 100% for Services performed at airport field offices or other City offices, 150% for Services performed at Consultant home offices, and 100% for personnel without an office.
 - ii. City has the right to recapture (via offset or refund) the difference between the amount it has actually paid to Consultant and the amount it should have paid under this contract clause for a specified time period. Any changes in rates resulting from negotiations must be approved by the Chief Procurement Officer.
- d. **Direct Costs.** Direct costs will consist of those costs described below which are incurred in the performance of Services under this Agreement, which are allowable and allocable, are not included in Overhead or Burden, and are routinely and uniformly charged to specific projects (collectively, "Direct Costs"). Any expenditure in excess of \$500 which qualifies as a Direct Cost will require prior approval of City. Consultant may not break down an expenditure which would otherwise be greater than \$500 in order to avoid this pre-approval requirement. Direct Costs will include the following categories:

- i. **Printing and Reproduction Costs.** The costs of all printing, binding, and reproduction and related expenses required to perform the Services. Many of these services will be available at City offices and should be used whenever possible and practicable. Costs for office supplies are included in this category.
- ii. **Communications and Shipping Costs.** The costs of field office telephone service and delivery costs required to perform the Services. Under this Agreement, City shall reimburse Consultant an allowance in the amount of \$50 per employee per month for wireless telephone services, taxes, and fees; such allowance will not include the cost of wireless telephones and accessories. In each applicable invoice, Consultant shall provide a spreadsheet listing all employee names for which the monthly allowance is requested and shall not provide copies of monthly bills for wireless telephone services unless requested by the Commissioner. Also under this Agreement, City shall not reimburse Consultant or Subconsultants for any electronic mail ("e-mail") services or e-mail server. City shall provide a file server (excluding an e-mail server) for shared use by Consultant's airport field office team.
- iii. **Travel and Related Expenses.** Out of town travel is not anticipated under this Agreement. Under this Agreement, "out of town" means outside the Chicago metropolitan area as defined in the City of Chicago Travel Policy ("Policy"). However, should out of town travel become necessary in the performance of the Services, Consultant must obtain prior written approval from City for related expenses. All such expenses must conform to the Policy, which can be downloaded at [\(weblink\)](#). Expenses incurred for travel in the Chicago metropolitan area will be subject to Group 2 Limitations as set forth in the Policy. City will pay current automobile mileage to Consultant and/or Subconsultants for travel associated with project site visits as required by the Commissioner. Consultant shall not be reimbursed for automobile mileage for trips or trip segments to and from employees' homes and to and from home offices. The automobile mileage rate is established in the Policy and may be amended from time to time by City.
- iv. **Equipment, Tools, and Vehicles.** Cost of any equipment, tools, or computer equipment and software, leased or purchased for Consultant's performance of the Services, provided that any such item purchased will become the property of City and further provided that Consultant must obtain prior written approval of City for the purchase or lease of such equipment, tools, computer equipment and software, to the extent any one such item will cost in excess of \$200.
- v. **Permits and Fees.** Costs to Consultant for permits and fees, if any, required for delivery of the Services, except for normal business and professional fees (which Consultant may include in its Overhead cost pool).
- vi. **Premium on Overtime.** Only when Consultant pays its employees a premium in excess of its hourly rates for overtime spent performing Services and such premium is not included in the calculation of Burden rates, the cost of the premium will be treated as a Direct Cost and will be reimbursed without any mark-up or profit. City shall not pay any overtime costs for full-time salaried personnel. Consultant shall provide a list of job classifications eligible for overtime pay for approval by City (see Attachment A to this Exhibit 2). Consultant shall not work any overtime hours unless and until prior approval is received from City. Overtime pay shall be limited to 1.5 times the approved actual Direct Hourly Labor Rate.
- vii. **Miscellaneous.** Any other costs or expenses incurred by Consultant as reasonable and necessary for the proper performance of the Services and allowable and directly allocable to the project. Any such expenditure will require prior approval by City. Costs for conference registration, storage trailers, and off-airport storage units are included in this category.

e. **Subconsultants.** City will reimburse Consultant for the costs of Subconsultants as those costs are

incurred under or in connection with subcontracts awarded by Consultant in accordance with the terms and conditions of this Agreement, subject to City's prior written approval. Consultant shall be responsible for payments to Subconsultants. Any invoices for Subconsultant costs must conform to the requirements set by City. In no event is Consultant entitled to any mark-up of Subconsultant costs. The costs of Subconsultants which are reimbursable to Consultant will include Subconsultants' Labor Costs, Overhead and Burden Costs, fixed fee, and Direct Costs. Subconsultant compensation is subject to the same terms and limitations established for Consultant's compensation in this Exhibit 2, including but not limited to audits, maximum Overhead and Burden rates, and the prohibition of mark-up on Direct Costs.

- f. **Fixed Fee.** For each sound insulation project and the corresponding budget, City and Consultant shall negotiate a fixed fee, performance-based milestones for disbursement of the fixed fee, and a milestone payout schedule.
- g. **Maximum Compensation.** The maximum compensation under this Agreement may not exceed \$5,000,000.00 without a formal written amendment pursuant to Section 3.1.4.9 of the Agreement. Payments shall be paid from Fund Number TBD and other appropriate sound insulation funding strips and are subject to the availability of funds therein.

3. METHOD OF PAYMENT

- a. **Invoices.** Consultant shall submit monthly invoices to City for Services performed during the preceding month/billing cycle. Consultant must support each invoice with sufficient detail as required by City to justify items in the invoice. City will process invoices for payment within sixty (60) days of receiving complete and accurate invoices. Consultant must also provide a report indicating achievement of a milestone in a format acceptable to City prior to payment of any portion of the fixed fee.
- b. **Invoice Disputes.** If any portion of an invoice is disputed by City, the amount in question will not be paid until such contested portion of the invoice is resolved in accordance with the Disputes provision of the Agreement.
- c. **Audits.** In accordance with the audit provisions of this Agreement, City reserves the right to audit Consultant's Overhead and Burden rate(s) and/or any components of compensation. Consultant must have a yearly financial audit performed by a Certified Public Accountant in accordance with the Federal Acquisition Regulation ("FAR") for its Overhead and Burden rate, the cost of which Consultant may include in its Overhead cost pool. Such yearly audit must be for a twelve-month period from January through December of each year. Consultant must submit the yearly audit to City no later than June 1st of the following calendar year. Each Subconsultant is encouraged to have a yearly financial audit prepared in accordance with the FAR, but such audit is not mandatory.

Exhibit 3: Sample Professional Services Contract

Spec. No: 466569
P.O. No: _____
Vendor No: _____
AIP or Federal-Funded

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

**THE CITY OF CHICAGO
DEPARTMENT OF AVIATION**

AND



**ON-CALL ARCHITECTURE AND ENGINEERING SERVICES FOR THE AIRPORT
RESIDENTIAL SOUND INSULATION PROGRAM**

**RAHM EMANUEL
MAYOR**

**Jamie L. Rhee
Chief Procurement Officer**

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ARTICLE 1. INTRODUCTION

This Contract is entered into as of the _____ day of _____, 20____ ("Effective Date") by and between _____, a _____ corporation ("Contractor"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of _____ ("City"), at Chicago, Illinois.

The intent of this Request for Qualifications ("RFQ") is to identify qualified Respondents having demonstrated experience, expertise and resources to provide the following services (the "Services"): architecture and engineering services which aims to reduce the impact of significant aircraft noise in homes surrounding Chicago O'Hare International Airport and Chicago Midway International Airport.

The Contractor warrants that it is ready, willing and able to perform as of the effective date of this Contract to the full satisfaction of the City.

NOW, THEREFORE, the City and the Contractor Agree as Follows:

ARTICLE 2. INCORPORATION OF EXHIBITS:

The following attached Exhibits are made a part of this agreement:

- Exhibit 1: Scope of Services and Time Limits for Performance
 - Key Personnel
- Exhibit 2: Schedule of Compensation
- Exhibit 3: Example Insurance Certification and Evidence of Insurance
- Exhibit 4: Economic Disclosure Statement and Affidavit
- Exhibit 5: DBE Compliance Plan

ARTICLE 3. STANDARD TERMS AND CONDITIONS

3.1. General Provisions

3.1.1. Definitions

"Addendum" is an official revision of the Bid Documents issued by the Chief Procurement Office prior to Bid Opening Date.

"Airports" means Chicago O'Hare International Airport and Chicago Midway International Airport.

"Airside" means, generally, those areas of an Airport which requires a person to pass through a security checkpoint to access. References to "sterile areas" generally mean Airside areas within terminal buildings. References to "Airfield", "Aircraft Operations Area", "AOA", or **"Secured areas"** generally mean outdoor Airside areas or areas not accessible to passengers.

"Attachments" are all the exhibits and other documents attached to the Bid Documents and/or incorporated into the Contract by reference.

"Bid" refers to an offer made by a Bidder in response to an invitation for bids which includes a binding proposal to perform the Contract which the City may rely on and accept, or in the case of an RFP or RFQ, the submission/proposal in response to that solicitation which may be subject to negotiation.

"Bidder" is a person, firm, or entity submitting a Bid in response to an invitation for bids; for RFPs and RFQs, references may be made to "Respondents." Once the Contract is awarded the Contractor shall assume that all references to a Bidder or Respondent and such attendant obligations apply to the Contractor.

"Bid Opening Date" is the date and time publicly advertised by the Chief Procurement Officer as the deadline for submission of Bids; this may be referred to as a "Proposal Due Date" for RFP and RFQ solicitations.

"Bid Documents" means all the documents issued by the Chief Procurement Officer, or referenced by the Chief Procurement Officer as being available on the City's website and incorporated by such reference, in connection with an invitation for bids or proposals. Except for such Bid Documents as are posted on the City's website and incorporated by reference, all Bid Documents must be submitted by a bidder on the Bid Opening Date.

"Business Day" means business days (Monday through Friday, excluding legal holidays, or City shut-down days) in accordance with the City of Chicago business calendar.

"Calendar Day" means all calendar days in accordance with the world-wide accepted calendar.

"Chief Procurement Officer" abbreviated as "CPO" means the chief executive of the City's Department of Procurement Services ("DPS"), and any representative duly authorized in writing to act on the Chief Procurement Officer's behalf.

"City" means the City of Chicago, a municipal corporation and home rule government under Sections 1 and 6(a), Article VII, of the 1970 Constitution of the State of Illinois.

"Commissioner" means the chief executive of any City department that participates in this Contract (regardless of the actual title of such chief executive), and any representative duly authorized in writing to act on the Commissioner's behalf with respect to this Contract.

"Contact Person" means the Contractor's management level personnel who will work as liaison between the City and the Contractor and be available to respond to any problems that may arise in connection with Contractor's performance under the Contract.

"Contract" means, upon notice of award from the CPO, the contract consisting of all Bid Documents relating to a specific invitation for bids or proposals, and all amendments, modifications, or revisions made from time to time in accordance with the terms thereof. All such documents comprising the Contract are referred to as the "Contract Documents".

"Contractor" means the Bidder or Proposer (person, firm, or entity) that is awarded the Contract by the CPO. Any references to the Bidder or Proposer in the Contract Documents is understood to apply to the Contractor.

"Department" which may also be referred to as the using/user Department is the City Department which appears on the applicable Purchase Order Release for goods, work, or services provided under this Contract.

"Detailed Specifications" refers to the contract specific requirements that includes but is not limited to a detailed description of the scope, term, compensation, price escalation, and such other additional terms and conditions governing this specific Contract.

"Holidays" refers to the official City Holidays when the City is generally closed for business which includes: New Year's Day, Dr. Martin Luther King Jr.'s Birthday, Lincoln's Birthday, President's Day, Pulaski Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

"MCC" is the abbreviation for the Municipal Code of Chicago.

"Party" or collectively "Parties" refers to the entities that have entered into this Contract including the Contractor and the City.

"Purchase Order" means a written purchase order from a Department referencing this Contract. Purchase Orders may also be referred to as "Blanket Releases".

"Services" refers to all work, services, and materials whether ancillary or as required by the Detailed Specifications that Contractor provides in performance of its obligations under this Contract.

"Specification" means the Bid Documents, including but not limited to the Detailed Specifications.

"Subcontractor" means any person or entity with whom the Contractor contracts to provide any part of the goods, services or work to be provided by Contractor under the Contract, including subcontractors of any tier, suppliers and material men, whether or not in privity with the Contractor.

3.1.2. Interpretation of Contract

3.1.2.1. Order of Precedence

The order of precedence of the component contract parts will be as follows:

- If funded by the Federal government or State of Illinois, terms required by the Federal Government or State of Illinois, as applicable, whether set out in this document, in a Task Order Request (if applicable), or otherwise.
- Standard provisions and form provisions relating to this procurement type
- Scope of Work and Detailed Specifications
- Task Order (if applicable)
- All other parts of this Contract.

Provided, however, in the event of an inconsistency between terms set out among different component parts of the Contract, or terms set out within a Contract part, notwithstanding the order of precedence noted above, the term that is most favorable to the City controls, unless expressly stated otherwise.

3.1.2.2. Interpretation and Rules

Unless a contrary meaning is specifically noted elsewhere, the phrases "as required", "as directed", "as permitted", and similar words mean the requirements, directions, and permissions of the Commissioner or CPO, as applicable. Similarly, the words "approved", "acceptable", "satisfactory", and similar words mean approved by, acceptable to, or satisfactory to the Commissioner or the CPO, as applicable.

The words "necessary", "proper", or similar words used with respect to the nature or extent of work or services mean that work or those services must be conducted in a manner, or be of a character which is necessary or proper for the type of work or services being provided in the opinion of the Commissioner and the CPO, as applicable. The judgment of the Commissioner and the CPO in such matters will be considered final.

Wherever the imperative form of address is used, such as "provide equipment required" it will be understood and agreed that such address is directed to the Contractor unless the provision expressly states that the City will be responsible for the action.

3.1.2.3. Severability

The invalidity, illegality, or unenforceability of any one or more phrases, sentences, clauses, or sections in this Contract does not affect the remaining portions of this Contract.

3.1.2.4. Entire Contract

The Contract Documents constitute the entire agreement between the parties and may not be modified except by the subsequent written agreement of the parties.

3.1.3. Subcontracting and Assignment

3.1.3.1. No Assignment of Contract

Pursuant to 65 ILCS 8-10-14, Contractor may not assign this Contract without the prior written consent of the CPO. In no case will such consent relieve the Contractor from its obligations, or change the terms of the Contract. The Contractor must notify the CPO, in writing, of the name of any proposed assignee and the reason for the assignment; consent to which is solely in the CPO's discretion.

3.1.3.2. Subcontracts

No part of the goods, work, or services to be provided under this Contract may be subcontracted without the prior written consent of the CPO; but in no case will such consent relieve the Contractor from its obligations, or change the terms of the Contract. Further, substitution of a previously approved Subcontractor without the prior written consent of the CPO is not permitted. The Contractor must notify the CPO of the names of all Subcontractors to be used and shall not employ any that the CPO has not approved. Prior to proposing the use of a certain Subcontractor, the Contractor must verify that neither the Subcontractor nor any of its owners is debarred from or otherwise ineligible to participate on City contracts. This information can be found on the City's website:

http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp/svcs/debarred_firms_list.html

The Contractor will only subcontract with competent and responsible Subcontractors. If, in the judgment of the Commissioner or the CPO, any Subcontractor is careless, incompetent, violates safety or security rules, obstructs the progress of the services or work, acts contrary to instructions, acts improperly, is not responsible, is unfit, is incompetent, violates any laws applicable to this Contract, or fails to follow the requirements of this Contract, then the Contractor will, immediately upon notice from the Commissioner or the CPO, discharge or otherwise remove such Subcontractor and propose an acceptable substitute for CPO approval. Removal and substitution must be in compliance with any applicable requirements of the MBE/WBE or DBE program.

All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Contract. Upon request of the City, Contractor must promptly provide a copy of its agreement(s) with its subcontractor(s). All subcontracts must contain provisions that require the subcontracted activity be performed in strict accordance with the requirements of this Contract, provide that the Subcontractors are subject to all the terms of this Contract, and are subject to the approval of the CPO. If the subcontract agreements do not prejudice any of the City's rights under this Contract, such agreements may contain different provisions than are provided in this Contract

with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the activity to be performed.

3.1.3.3. No Pledging or Assignment of Contract Funds Without City Approval

The Contractor may not pledge, transfer, or assign any interest in this Contract or contract funds due or to become due without the prior written approval of the CPO. Any such attempted pledge, transfer, or assignment, without the prior written approval of the CPO is void as to the City and will be deemed an event of default under this Contract.

3.1.3.4. City's Right to Assign

The City expressly reserves the right to assign or otherwise transfer all or any part of its interests in this Contract without the consent or approval of the Contractor.

3.1.3.5. Assigns

All of the terms and conditions of this Contract are binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees, and assigns.

3.1.4. Contract Governance

3.1.4.1. Governing Law and Jurisdiction

This Contract will be governed in accordance with the laws of the State of Illinois, without regard to choice of law principles. The Contractor hereby irrevocably submits, and will cause its Subcontractors to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. The Contractor irrevocably waives any objection (including without limitation any objection of the laying of venue or based on the grounds of forum non conveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Contract in the jurisdiction set forth above.

3.1.4.2. Consent to Service of Process

The Contractor agrees that service of process on the Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor. The Contractor designates and appoints the representative identified on the signature page hereto under the heading "Designation of Agent for Service Process", as its agent in Chicago, Illinois, to receive on its behalf service of all process (which representative will be available to receive such service at all times), such service being hereby acknowledged by such representative to be effective and binding service in every respect. Said agent may be changed only upon the giving of written notice by the Contractor to the City of the name and address of a new Agent for Service of Process who works within the geographical boundaries of the City of Chicago. Nothing herein will affect the right to serve process in any other manner permitted by law or will limit the right of the City to bring proceedings against the Contractor in the courts of any other jurisdiction.

3.1.4.3. Cooperation by Parties and between Contractors

The Parties hereby agree to act in good faith and cooperate with each other in the performance of this Contract. The Contractor further agrees to implement such measures as may be necessary to ensure that its staff and its Subcontractors will be bound by the provisions of this Contract. The City will be expressly identified as a third party beneficiary in the subcontracts and granted a direct right of enforcement thereunder.

Unless otherwise provided in Detailed Specifications, if separate contracts are let for work within or adjacent to the project site as may be further detailed in the Contract Documents, each Contractor must perform its Services so as not to interfere with or hinder the progress of completion of the work being performed by other contractors.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with its contract, and shall protect and hold harmless the City from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Contractor because of the presence and operations of other contractors working within the limits of its work or Services. Each Contractor shall assume all responsibility for all work not completed or accepted because of the presence and operations of other contractors.

The Contractor must as far as possible, arrange its work and space and dispose of the materials being used, so as not to interfere with the operations of the other contractors within or adjacent to the limits of the project site.

3.1.4.4. No Third Party Beneficiaries

The parties agree that this Contract is solely for the benefit of the parties and nothing herein is intended to create any third party beneficiary rights for subcontractors or other third parties.

3.1.4.5. Independent Contractor

This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the City. The rights and the obligations of the parties are only those set forth in this Contract. Contractor must perform under this Contract as an independent contractor and not as a representative, employee, agent, or partner of the City.

This Contract is between the City and an independent contractor and, if Contractor is an individual, nothing provided for under this Contract constitutes or implies an employer-employee relationship such that:

The City will not be liable under or by reason of this Contract for the payment of any workers' compensation award or damages in connection with the Contractor performing the Services required under this Contract.

Contractor is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.

The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Contractor.

3.1.4.6. Authority

Execution of this Contract by the Contractor is authorized and signature(s) of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Contract, including each and every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. If other than a sole proprietorship, Contractor must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entity(s) rules and procedures.

3.1.4.7. Joint and Several Liability

In the event that Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Contractor will be the joint and several obligation or undertaking of each such individual or other legal entity.

3.1.4.8. Notices

All communications and notices to the City from the Contractor must be faxed, delivered personally, electronically mailed or mailed first class, postage prepaid, to the Commissioner of the using

Department that appears on the applicable Purchase Order, with a copy to the Chief Procurement Officer, Room 806, City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602.

A copy of any communications or notices to the City relating to Contract interpretation, a dispute, or indemnification obligations shall also be sent by the same means set forth above to the Department of Law, Room 600, City Hall, 121 N LaSalle Street, Chicago, Illinois 60602.

All communications and notices from the City to the Contractor, unless otherwise provided for, will be faxed, delivered personally, electronically mailed or mailed first class, postage prepaid, to the Contractor care of the name and to the address listed on the Bid Documents' proposal page. If this contract was awarded through a process that does not use bid or proposal documents, notices to contractor will be sent to an address specified in the Contract.

3.1.4.9. Amendments

Following Contract award, no change, amendment, or modification of the Contract Documents or any part thereof, is valid unless stipulated in writing and signed by the Contractor, Mayor, CPO, and Comptroller, unless specifically allowed for by the Contract Documents.

3.1.4.10. No Waiver of Legal Rights

Neither the acceptance by the City, or any representative of the City, nor any payment for or acceptance of the whole or any part of the deliverables, nor any extension of time, nor any possession taken by the City, shall operate as a waiver by the City of any portion of the Contract, or of any power herein reserved or any right of the City to damages herein provided.

A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. Whenever under this Contract the City by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the City's or the Contractor's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and will not be deemed a waiver forever or for subsequent instance of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Contract regardless of the number of time the City may have waived the performance, requirement, or condition.

3.1.4.11. Non-appropriation of Funds

Pursuant to 65 ILCS 5/8-1-7, any contract for the expenditure of funds made by a municipality without the proper appropriation is null and void.

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Contract, then the City will notify the Contractor of that occurrence and this Contract shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Contract are exhausted.

No payments will be made to the Contractor under this Contract beyond those amounts appropriated and budgeted by the City to fund payments under this Contract.

3.1.4.12. Participation By Other Government Agencies

Other Local Government Agencies (defined below) may be eligible to participate in this Contract if (a) such agencies are authorized, by law or their governing bodies, to execute such purchases, (b) such authorization is consented to by the City of Chicago's CPO, and (c) such purchases have no net adverse effect on the City of Chicago and result in no diminished services from the Contractor to the City's Departments.

Examples of such Local Government Agencies are: the Chicago Board of Education, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier and Exposition Authority (McCormick Place, Navy Pier), and the Municipal Courts.

Said purchases will be made upon the issuance of a purchase order directly from the Local Government Agency. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

3.1.5. Confidentiality

All deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Contractor under this Contract are property of the City and are confidential, except as specifically authorized in this Contract or as may be required by law. Contractor must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Contractor by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Contractor must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions contained in this Contract.

Contractor must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Contract, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner.

If Contractor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Contractor's possession by reason of this Contract, Contractor must immediately give notice to the Commissioner, CPO and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

3.1.6. Indemnity

Contractor must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees (collectively, the "Indemnified Parties,") from and against any and all Losses (as defined below), in consequence of the granting of this Contract or arising out of or being in any way connected with the Contractor's performance under this Contract, except as otherwise provided in 740 ILCS 35 "Construction Contract Indemnification for Negligence Act" if it applies, including those related to: injury, death or damage of or to any person or property; any infringement or violation of any property right (including any patent, trademark or copyright); failure to pay or perform or cause to be paid or performed Contractors covenants and obligations as and when required under this Contract or otherwise to pay or perform its obligations to any subcontractor; the City's exercise of its rights and remedies under this Contract; and injuries to or death of any employee of Contractor or any subcontractor under any workers compensation statute. When 740 ILCS 35 applies, indemnification provided by the Contractor to the Indemnified Parties will be to the maximum extent permitted under applicable law.

"Losses" means, individually and collectively, liabilities of every kind, including monetary damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, fines, judgments or settlements, any or all of which in any way arise out of or relate to the negligent or otherwise wrongful errors, acts, or omissions of Contractor, its employees, agents and subcontractors.

The Contractor will promptly provide, or cause to be provided, to the Commissioner and the Corporation Counsel copies of such notices as Contractor may receive of any claims, actions, or suits as may be given or filed in connection with the Contractor's performance or the performance of any Subcontractor and for which the Indemnified Parties are entitled to indemnification hereunder.

At the City Corporation Counsel's option, Contractor must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Contractor of any of its obligations under this Contract. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

The Contractor shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractors, agents, or servants of Contractor even though the claimant may allege that the Indemnified Parties were in charge of the work or service performed under the Contract, that it involves equipment owned or furnished by the Indemnified Parties, or allege negligence on the part of the Indemnified Parties. The City will have the right to require Contractor to provide the City with a separate defense of any such suit.

To the extent permissible by law, Contractor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due to third parties arising out of any Losses, including but not limited to any limitations on Contractor's liability with respect to a claim by any employee of Contractor arising under the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute.

The indemnities in this section survive expiration or termination of this Contract for matters occurring or arising during the term of this Contract or as the result of or during the Contractor's performance of work or services beyond the term. Contractor acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by the Contractor's duties under this Contract, including the insurance requirements set forth in the Contract.

3.1.7. Non-Liability of Public Officials

Contractor and any assignee or Subcontractor of Contractor must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Contract or because of the City's execution, attempted execution or any breach of this Contract.

3.1.8. Contract Extension Option

The City may extend this Contract once following the expiration of the contract term for up to 181 Calendar Days or until such time as a new contract has been awarded for the purpose of providing continuity of services and/or supply while procuring a replacement contract subject to acceptable performance by the Contractor and contingent upon the appropriation of sufficient funds. The CPO will give the Contractor notice of the City's intent to exercise its option to renew the Contract for the approaching option period.

3.2. Compensation Provisions

3.2.1. Ordering, Invoices, and Payment

3.2.1.1. Purchase Orders

Requests for work, services or goods in the form of a Purchase Order will be issued by the Department and sent to the Contractor to be applied against the Contract. The Contractor must not honor any order(s), perform work or services or make any deliveries of goods without receipt of a Purchase Order issued by the City of Chicago. Any work, services, or goods provided by the Contractor without a Purchase Order is made at the Contractor's risk. Consequently, in the event such Purchase Order is not provided by the City, the Contractor releases the City from any liability whatsoever to pay for any work, services, or goods provided without said Purchase Order.

Purchase Orders will indicate quantities ordered for each line item, unit/total cost, shipping address, delivery date, fund chargeable information, catalog information (if applicable), and other pertinent instructions regarding performance or delivery.

3.2.1.2. Invoices

If required by the Scope of Work / Detailed Specifications, original invoices must be sent by the Contractor to the Department to apply against the Contract. Invoices must be submitted in accordance with the mutually agreed upon time period with the Department. All invoices must be signed, dated and reference the City's Purchase Order number and Contract number. A signed work ticket, time sheets, manufacturer's invoice, if applicable, or any documentation requested by the Commissioner must accompany each invoice. If a Contractor has more than one contract with the City, separate invoices must be prepared for each contract in lieu of combining items from different contracts under the same invoice. Invoice quantities, description of work, services or goods, unit of measure, pricing and/or catalog information must correspond to the items on the accepted Price List or Proposal Pages or of the Bid Documents. If invoicing Price List/Catalog items, indicate Price List/Catalog number, item number, Price List/Catalog date and Price List/Catalog page number on the invoice.

3.2.1.3. Payment

The City will process payment within sixty (60) calendar days after receipt of invoices and all supporting documentation necessary for the City to verify the satisfactory delivery of work, services or goods to be provided under this Contract.

Contractor may be paid, at the City's option, by electronic payment method. If the City elects to make payment through this method, it will so notify the Contractor, and Contractor agrees to cooperate to facilitate such payments by executing the City's electronic funds transfer form, available for download from the City's website at:

http://www.cityofchicago.org/content/dam/city/depts/fin/supp_info/DirectDepositCityVendor.pdf.

The City reserves the right to offset mistaken or wrong payments against future payments.

The City will not be obligated to pay for any work, services or goods that were not ordered with a Purchase Order or that are non-compliant with the terms and conditions of the Contract Documents. Any goods, work, or services which fail tests and/or inspections are subject to correction, exchange or replacement at the cost of the Contractor.

3.2.1.4. Electronic Ordering and Invoices

The Contractor will cooperate in good faith with the City in implementing electronic ordering and invoicing, including but not limited to price lists/catalogs, purchase orders, releases and invoices. The electronic ordering and invoice documents will be in a format specified by the City and transmitted by an electronic means specified by the City. Such electronic means may include, but are not limited to, disks, e-mail, EDI, FTP, web sites, and third party electronic services. The CPO reserves the right to change the document format and/or the means of transmission upon written notice to the Contractor. Contractor will ensure that the essential information, as determined by the CPO, in the electronic document, corresponds to that information submitted by the Contractor in its paper documents. The electronic documents will be in addition to paper documents required by this Contract, however, by written notice to the Contractor, the CPO may deem any or all of the electronic ordering and invoice documents the official documents and/or eliminate the requirement for paper ordering and invoice documents.

3.2.1.5. City Right to Offset

The City may offset against any invoice from Contractor any costs incurred by the City as a result of event of default by Contractor under this Contract or otherwise resulting from Contractor's performance or non-performance under this Contract, including but not limited to any credits due as a result of over-billing by Contractor or overpayments made by the City. If the amount offset is insufficient to cover those costs, Contractor is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

3.2.1.6. Records

Upon request the Contractor must furnish to the City such information related to the progress, execution, and cost of the Services. All books and accounts in connection with this Contract must be open to inspection by authorized representatives of the City. The Contractor must make these records available at reasonable times during the performance of the Services and will retain them in a safe place and must retain them for a period that is the longer of five (5) years or as required by relevant retention schedules after the expiration or termination of the Contract.

3.2.1.7. Audits

3.2.1.7.1. City's Right to Conduct Audits

The City may, in its sole discretion, audit the records of Contractor or its Subcontractors, or both, at any time during the term of this Contract or within five years after the Contract ends, in connection with the goods, work, or services provided under this Contract. Each calendar year or partial calendar year may be deemed an "audited period".

3.2.1.7.2. Recovery for Over-Billing

If, as a result of such an audit, it is determined that Contractor or any of its Subcontractors has overcharged the City in the audited period, the City will notify Contractor. Contractor must then promptly reimburse the City for any amounts the City has paid Contractor due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows:

If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then the Contractor must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;

If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then Contractor must reimburse the City for the full cost of the audit and of each subsequent audit.

Failure of Contractor to reimburse the City in accordance with the foregoing is an event of default under this Contract, and Contractor will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

3.2.2. Subcontractor Payment Reports

The Contractor must report payments to Subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City to the Contractor for services performed, on the first day of each month and every month thereafter, email and/or fax notifications will be sent to the Contractor with instructions to report payments to Subcontractors that have been made in the prior month. This information must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.

Once the Contractor has reported payments made to each Subcontractor, including zero dollar amount payments, the Subcontractor will receive an email and/or fax notification requesting that they log into the system and confirm payments received.

All monthly confirmations must be reported on or before the twentieth (20th) day of each month. Contractor and Subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

All contracts between the Contractor and its Subcontractors must contain language requiring the Subcontractors to respond to email and/or fax notifications from the City requiring them to report payments received from the Contractor.

Access to the Certification and Compliance Monitoring System (C2), which is a web-based reporting system, can be found at: <https://chicago.mwdbe.com>

(Note: This site works for reporting all Subcontractor payments regardless of whether they are MBE/WBE/DBE or non-certified entities.)

If a Subcontractor has satisfactorily performed in accordance with the requirements of the Contract, Contractor must pay Subcontractor for such work, services, or materials within seven (7) calendar days of Contractor receiving payment from the City. Failure to comply with the foregoing will be deemed an event of default.

3.2.3. Prompt Payment to Subcontractors

3.2.3.1. Incorporation of Prompt Payment Language in Subcontracts

Contractor must state the requirements of these Prompt Payment provisions in all Subcontracts and purchase orders. If Contractor fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all Subcontracts and purchase orders. Contractor and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Contractor's participation and that of its Subcontractors on this Contract.

3.2.3.2. Payment to Subcontractors Within Seven Days

The Contractor must make payment to its Subcontractors within 7 days of receipt of payment from the City for each invoice.

Provided the Subcontractor's performance has met the terms of the Contract Documents, and that Subcontractor has submitted its request for payment to the Contractor with such documentation as is reasonably necessary to substantiate such performance, the Contractor shall bill the City for such performance when the Contractor is first authorized under the payment schedule of the Contract to submit an invoice to the City for such performance. Contractor may only invoice the City at the rates contained in the Contract Documents.

3.2.3.2.1. Reporting Failures to Promptly Pay

The City posts payments to prime contractors on the web at

<http://webapps.cityofchicago.org/VCSearchWeb/org/cityofchicago/vcsearch/controller/payments/begin.do?agencyId=city>.

If the Contractor, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within 7 days after receipt of payment under a City contract, the Contractor shall pay to its Subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 7-day period until fully paid.

In the event that a Contractor fails to make payment to a Subcontractor within the 7-day period required above, the Subcontractor may notify the City by submitting a report form that may be downloaded from the DPS website at:

http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/StandardFormsAgreements/Failure_to_Promtly_Pay_Fillable_Form_3_2013.pdf

The report will require the Subcontractor to affirm that (a) its invoice to the Contractor was included in the payment request submitted by the contractor to the City and (b) Subcontractor has not, at the time of the report, received payment from the contractor for that invoice. The report must reference the payment (voucher) number posted on-line by the City in the notice of the payment to the contractor.

Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the Municipal Code of Chicago, making false statements or claims to the City are violations of law and subject to a range of penalties including fines and debarment.

3.2.3.2.2. Whistleblower Protection

Contractor shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to this Sub-Section 0. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth in Section 3.5 hereof, including termination. In addition to those remedies, any retaliatory action by a contractor may result in a contractor being deemed non-responsible for future City contracts or, if, in the sole judgment of the Chief Procurement Officer, such retaliatory action is egregious, the Chief Procurement Officer may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

3.2.3.3. Liquidated Damages for Failure to Promptly Pay

Much of the City's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the City. Inasmuch as the actual damages to the City due to such failure are uncertain in amount and difficult to prove, Contractor and City agree that the Chief Procurement Officer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the City for any and all damage incurred due to the failure of the Contractor to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the City shall be used to improve the administration and outreach efforts of the City's Small Business Program.

3.2.3.4. Action by the City

Upon receipt of a report of a failure to pay, the City will issue notice to the contractor, and provide the contractor with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in the Contract. The Chief Procurement Officer, in his or her sole judgment, shall determine whether any cause for nonpayment provided by a contractor is reasonable. In the event that the contractor fails to demonstrate reasonable cause for failure to make payment, the City shall notify the contractor that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report:	\$50
Second Unexcused Report:	\$100
Third Unexcused Report:	\$250
Fourth Unexcused Report:	\$500

3.2.3.5. Direct Payment to Subcontractors By City

The CPO may notify the Contractor that payments to the Contractor will be suspended if the CPO has determined that the Contractor has failed to pay any Subcontractor, employee, or workman, for work performed. If Contractor has not cured a failure to pay a Subcontractor, employee or workman within 10 days after receipt of such notice, the CPO may request the Comptroller to apply any money due, or that may become due, to Contractor under the Contract to the payment of such Subcontractors, workmen, and employees and the effect will be the same, for purposes of payment to Contractor of the Contract Price, as if the City had paid Contractor directly.

Further, if such action is otherwise in the City's best interests, the CPO may (but is not obligated to) request that the Comptroller make direct payments to Subcontractors for monies earned on contracts and the effect will be the same, for purposes of payment to Contractor of the Contract Price, as if the City had paid Contractor directly. The City's election to exercise or not to exercise its rights under this paragraph shall not in any way affect the liability of the Contractor or its sureties to the City or to any such Subcontractor, workman, or employee upon any bond given in connection with such Contract.

3.2.4. General Price Reduction – Automatic Eligibility for General Price Reductions

If at any time after the Bid Opening Date the Contractor makes a general reduction in the price of any goods, services or work covered by the Contract to its customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Contract for the duration

of the contract period (or until the price is further reduced). Such price reduction will be effective at the same time and in the same manner as the reduction in the price to customers generally.

For purpose of this provision, a general price reduction will mean any reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this Contract. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a general price reduction under this provision.

The Contractor must invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the General Price Reduction provision of the Contract. The Contractor, in addition, must within 10 calendar days of any general price reduction notify the CPO of such reduction by letter. Failure to do so will be an event of default. Upon receipt of any such notice of a general price reduction all participating Departments will be duly notified by the CPO.

Failure to notify the CPO of a General Price Reduction is an event of default, and the City's remedies shall include a rebate to the City of any overpayments.

3.3. Compliance With All Laws

3.3.1. General

Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, regulations, codes, ordinances and executive orders, in effect now or later and as amended whether or not they appear in the Contract Documents.

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in the Contract are deemed inserted in the Contract whether or not they appear in the Contract.

Contractor must pay all taxes and obtain all licenses, certificates, and other authorizations required in connection with the performance of its obligations hereunder, and Contractor must require all Subcontractors to also do so. Failure to do so is an event of default and may result in the termination of this Contract.

3.3.2. Certification of Compliance with Laws

By entering into this Contract with the City, Contractor certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet City requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the contractor becomes aware of such information, it must immediately disclose it to the City.

3.3.3. Federal Affirmative Action

It is an unlawful employment practice for the Contractor (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, or the terms, conditions, or privileges of his employment, because of such individual's race, color, religion, sex, age, handicap or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, age, handicap or national origin.

Contractor must comply with The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1988), as amended. Attention is called to: Exec. Order No. 11,246,30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Exec. Order No. 11,375,32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086,43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 61 01-61 06 (1988); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Americans with Disabilities Act, 42 U.S.C. sec. 12102 et seq.; and 41 C.F.R. Part 60 et seq. (1990); and all other applicable federal laws, rules, regulations and executive orders.

3.3.4. Civil Rights Act of 1964, Title VI, Compliance With Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

3.3.4.1. Compliance with Federal Nondiscrimination Requirements

The contractor will comply with federal nondiscrimination laws, regulations, and authorities, as they may be amended from time to time ("Acts and Regulations"), which include:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination under Title VI includes discrimination because of limited English proficiency (LEP). (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq.);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, religion, color, national origin, or sex in any activity carried out with a grant from the FAA).

3.3.4.2. Non-discrimination

The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors,

including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21 (Nondiscrimination in Federally-Assisted Programs of the US Department of Transportation).

3.3.4.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

3.3.4.4. Information and Reports

The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or applicable federal agency (e.g. Federal Aviation Administration, Federal Highway Administration, Federal Transit Authority, Transportation Security Administration, Department of Housing and Urban Development, etc.) providing funding to the City department(s) on this contract to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the federal agency, as appropriate, and will set forth what efforts it has made to obtain the information.

3.3.4.5. Sanctions for Noncompliance

In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the City will impose such contract sanctions as it or the relevant federal funding agency may determine to be appropriate, including, but not limited to:

- A. Withholding payments to the contractor under the contract until the contractor complies; and/or
- B. Cancelling, terminating, or suspending a contract, in whole or in part.

3.3.4.6. Incorporation of Provisions

The contractor will include the provisions of above paragraphs 3.3.4.1, "Compliance With Regulations" through 3.3.4.6 "Incorporation of Provisions" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the applicable federal agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

3.3.5. Other Non-Discrimination Requirements

3.3.5.1. Illinois Human Rights Act

3.3.5.1.1. Generally

Contractor must comply with the Illinois Human Rights Act, 775 ILCS 5/1-1 01 et seq., as amended and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 44 Ill. Admin. Code 750 Appendix A.

Contractor must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended; and all other applicable state laws, rules, regulations and executive orders.

3.3.5.1.2. State of Illinois Equal Employment Opportunity Clause

In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause or the Illinois Human Rights Act, the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

- A) That Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service; and, further, that he or she will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.
- B) That, if Contractor hires additional employees in order to perform this contract or any portion of this contract, Contractor will determine the availability (in accordance with 44 Ill. Admin. Code Part 750) of minorities and women in the areas from which Contractor may reasonably recruit and Contractor will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.
- C) That, in all solicitations or advertisements for employees placed Contractor or on Contractor's behalf, Contractor will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service.
- D) That Contractor will send to each labor organization or representative of workers with which Contractor has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and 44 Ill. Admin. Code Part 750. If any labor organization or representative fails or refuses to cooperate with the Contractor in Contractor's efforts to comply with the Act and this Part, the Contractor will promptly notify the Illinois Department of Human Rights and the City and will recruit employees from other sources when necessary to fulfill its obligations under the contract.
- E) That Contractor will submit reports as required by 44 Ill. Admin. Code Part 750, furnish all relevant information as may from time to time be requested by the Illinois Department of Human Rights or the City, and in all respects comply with the Illinois Human Rights Act and 44 Ill. Admin. Code Part 750.
- F) That Contractor will permit access to all relevant books, records, accounts and work sites by personnel of the City and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights's Rules and Regulations.
- G) That Contractor will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed, so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by subcontractors; and further it will promptly notify the City and the Illinois Department of Human Rights in the event any subcontractor fails or refuses

to comply with the provisions. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

3.3.5.2. Chicago Human Rights Ordinance MCC Ch. 2-160

Contractor must comply with the Chicago Human Rights Ordinance, MCC Ch. 2-160, Sect. 2-160-010 et seq., as amended; and all other applicable municipal code provisions, rules, regulations and executive orders.

Contractor must furnish or shall cause each of its Subcontractors to furnish such reports and information as requested by the Chicago Commission on Human Relations.

3.3.5.3. Business Enterprises Owned by People With Disabilities (BEPD)

Pursuant to MCC 2-92-586, Contractor is strongly encouraged to subcontract with businesses certified as business enterprises owned or operated by people with disabilities ("BEPD") as defined in that section or MCC 2-92-337, and to use BEPD businesses as suppliers.

3.3.6. Wages

Contractor must pay the highest of (1) prevailing wage/Davis-Bacon rate, if applicable; (2) minimum wage specified by Mayoral Executive Order 2014-4; "Living Wage" rate specified by MCC Sect. 2-92-610; (3) Chicago Minimum Wage rate specified by MCC Chapter 1-24, or (4) the highest applicable State or Federal minimum wage.

3.3.6.1. Minimum Wage, Mayoral Executive Order 2014-1

Mayoral Executive Order 2014-1 provides for a fair and adequate Minimum Wage to be paid to employees of City contractors and subcontractors performing work on City contracts.

If this contract was advertised on or after October 1, 2014, Contractor must comply with Mayoral Executive Order 2014-1 and any applicable regulations issued by the CPO. The Minimum Wage to be paid pursuant to the Order as of July 1, 2017 is **\$13.45 per hour**. The Minimum Wage must be paid to:

All employees regularly performing work on City property or at a City jobsite.

All employees whose regular work entails performing a service for the City under a City contract.

Beginning on July 1, 2015, and every July 1 thereafter, the hourly wage specified by the Executive Order shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor. Any hourly wage increase shall be rounded up to the nearest multiple of \$0.05. Such increase shall remain in effect until any subsequent adjustment is made. On or before June 1, 2015, and on or before every June 1 thereafter, the City shall make available to City Concessionaires a bulletin announcing the adjusted minimum hourly wages for the upcoming year.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of contractors operations, does not directly relate to the services provided to the City under the contract, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on City property or at a City jobsite. It is also not required to be paid by employers that are 501(c)(3) not-for-profits.

Except as further described, the Minimum Wage is also not required to be paid to categories of employees subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., in force as of the date of this Contract or as amended. Nevertheless, the Minimum Wage is required to be paid to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law.

Additionally, the Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by Mayoral Executive

Order 2014-1, if that collective bargaining agreement was in force prior to October 1, 2014 or if that collective bargaining agreement clearly and specifically waives the requirements of the order.

If the payment a Base Wage pursuant to Municipal Code of Chicago Sect. 2-92-610 is required for work or services done under this Contract, and the Minimum Wage is higher than the Base Wage, then the Contractor must pay the Minimum Wage. Likewise, if the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Contractor must pay the prevailing wage.

Contractors are reminded that they must comply with Municipal Code Chapter 1-24 establishing a minimum wage.

3.3.6.2. Living Wage Ordinance

MCC Sect. 2-92-610 provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers, and clerical workers ("Covered Employees"). Accordingly, pursuant to MCC Sect. 2-92-610 and regulations promulgated thereunder:

if the Contractor has 25 or more full-time employees, and if at any time during the performance of the contract the Contractor and/or any subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then The Contractor's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the Contract term when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Contract term.

As of July 1, 2017 the Base Wage is \$12.30. The current rate can be found on the Department of Procurement Services' website.

Note: As of July 1, 2016, the wage specified by Mayoral Executive Order 2014-1 is higher than the Base Wage rate. Therefore, the higher wage specified by the Executive Order (or other applicable rule or law) must be paid.

Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Contract, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then the Contractor must pay the prevailing wage rates.

The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The Contractor agrees to provide the City with documentation acceptable to the CPO demonstrating that all Covered Employees, whether employed by the Contractor or by a subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit the Contractor and/or subcontractors to verify compliance herewith.

Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to three years.

Not-for-Profit Corporations: If the Contractor is a corporation having Federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions above do not apply.

3.3.6.3. Chicago Paid Sick Leave Ordinance

The Paid Sick Leave Ordinance, which is published in the June 22, 2016 Council Journal, pages 27188 – 27197 and which will be codified at MCC 1-24-045, became effective July 1, 2017. Contractor understands that, to the extent that the Ordinance applies to its activities, it must comply with the Ordinance.

3.3.6.4. Equal Pay

The Contractor will comply with all applicable provisions of the Equal Pay Act of 1963, 29 U.S.C. 206(d) and the Illinois Equal Pay Act of 2003, 820 ILCS 112/1, *et seq.*, as amended, and all applicable related rules and regulations including but not limited to those set forth in 29 CFR Part 1620 and 56 Ill. Adm. Code Part 320.

3.3.7. Economic Disclosure Statement and Affidavit and Appendix A ("EDS")

Pursuant to MCC Ch. 2-154 and 65 ILCS 5/8-10-8.5 any person, business entity or agency submitting a bid or proposal to or contracting with the City of Chicago will be required to complete the Disclosure of Ownership Interests in the EDS. Failure to provide complete or accurate disclosure will render this Contract voidable by the City.

Contractors must complete an online EDS prior to the Bid Opening Date. Contractors are responsible for notifying the City and updating their EDS any time there is a change in circumstances that makes any information provided or certification made in an EDS inaccurate, obsolete or misleading. Failure to so notify the City and update the EDS is grounds for declaring the Contractor in default, terminating the Contract for default, and declaring the Contractor ineligible for future contracts.

Contractor makes certain representations and certifications that the City relies on in its decision to enter into a contract. The Laws and requirements that are addressed in the EDS include the following:

3.3.7.1. Business Relationships With Elected Officials MCC Sect. 2-156-030(b)

Pursuant to MCC Sect. 2-156-030(b), it is illegal for any elected official, or any person acting at the direction of such official, to contact either orally or in writing any other City official or employee with respect to any matter involving any person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. In addition, no elected official may participate in any discussion in any City Council committee hearing or in any City Council meeting or vote on any matter involving the person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months.

Violation of MCC Sect. 2-156-030 by any elected official with respect to this contract will be grounds for termination of this contract. The term financial interest is defined as set forth in MCC Chapter 2-156.

3.3.7.2. MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification

The Contractor or each joint venture partner, if applicable, must complete the appropriate subsections in the EDS which certify that the Contractor or each joint venture partner, its agents, employees, officers and any subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1 and (c) are not presently debarred or suspended; Certification Regarding

Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

Contractor, in performing under this contract shall comply with MCC Sect. 2-92-320, as follows:

No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct; or (d) has violated MCC Sect. 2-92-610; or (e) has violated any regulation promulgated by the Chief Procurement Officer that includes ineligibility as a consequence of its violation; or (f) has committed, within a 24-month period, three or more violations of Chapter 1-24 of the MCC; or (g) has been debarred by any local, state or federal government agency from doing business with such government agency, for any reason or offense set forth in subsections (a), (b), or (c) of this section, or substantially equivalent reason or offense, for the duration of the debarment by such government agency..

For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

3.3.7.3. Federal Terrorist (No-Business) List

Contractor warrants and represents that neither Contractor nor an Affiliate, as defined below, appears on the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment.

"Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Contractor. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity, either acting individually or acting jointly or in concert with others, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

3.3.7.4. Governmental Ethics Ordinance 2-156

Contractor must comply with MCC Ch. 2-156, Governmental Ethics, including but not limited to MCC Sect. 2-156-120 pursuant to which no payment, gratuity or offer of employment will be made in connection with any City contract, by or on behalf of a subcontractor to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this Chapter will be voidable as to the City.

3.3.7.5. Lobbyists

Contractor must comply with Chapter 2-156 of the Municipal Code. Contractor acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156, including any contract entered into with any person who has retained or employed a non-registered lobbyist in violation of Section 2-156-305 of the Municipal Code is voidable as to the City.

3.3.8. Restrictions on Business Dealings

3.3.8.1. Prohibited Interests in City Contracts

No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the work or services to which this Contract pertains is permitted to have any personal interest, direct or indirect, in this Contract. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Contract or to any financial benefit to arise from it.

3.3.8.2. Conflicts of Interest

The Contractor covenants that it, and to the best of its knowledge, its subcontractors if any, presently have no interest and will not acquire any interest, direct or indirect, in any enterprise, project or contract which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The Contractor further covenants that in the performance of the Contract no person having any such interest will be employed, either by Contractor or any subcontractor, to perform any work or services under the Contract or have access to confidential information.

If the City determines that the Contractor does have such a conflict of interest, the City will notify the Contractor in writing, stating the basis for its determination. The Contractor will thereafter have 30 days in which to respond with reasons why the Contractor believes a conflict of interest does not exist. If the Contractor does not respond or if the City still reasonably determines a conflict of interest to exist, the Contractor must terminate its interest in the other enterprise, project, or contract. Further, if the City in the reasonable judgment of the CPO or Commissioner determines that any subcontractor's work or services for others conflicts with the work or services to be provided by them, upon request of the City, Contractor must require that subcontractor to terminate such other work or services immediately.

If Contractor or any subcontractors become aware of a conflict, they must immediately stop work on the activity causing the conflict and notify the City.

If Contractor or any subcontractors ("Contracting Parties") assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals, bid specifications for a project, or other procurement solicitation document, the Contracting Parties must not participate, directly or indirectly, as a prime, subcontractor, subconsultant or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Contract or afterwards. The Contracting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Contracting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

3.3.8.3. Prohibition on Certain Contributions, Mayoral Executive Order 2011-4

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any

amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor approached the City, as applicable, regarding the formulation of this Contract, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Contract, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Contract, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Contractor violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Contract resulting from this specification, the CPO may reject Contractor's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Contractor and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a "political contribution" as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in MCC Ch. 2-156, as amended.

3.3.9. Debts Owed to the City; Anti-Scofflaw, MCC Sect. 2-92-380

In addition to the certifications regarding debts owed to the City in the EDS, Contractor is subject to MCC Sect. 2-92-380.

Pursuant to MCC Sect. 2-92-380 and in addition to any other rights and remedies (including set-off) available to the City under this Contract or permitted at law or in equity, the City will be entitled to set off a portion of the contract price or compensation due under the Contract, in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and the amount of any debt owed by the contracting party to the City. For purposes of this section, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the

time specified on the complaint, and debt means a specified sum of money owed to the City for which the period granted for payment has expired.

However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under the contract if one or more of the following conditions are met:

the contracting party has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking violation complaints and debts owed to the City and the Contracting party is in compliance with the agreement; or

the contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

3.3.10. Other City Ordinances and Policies

3.3.10.1. False Statements

False statements made in connection with this Contract, including statements in, omissions from and failures to timely update the EDS, as well as in any other affidavits, statements or Contract Documents constitute a material breach of the Contract. Any such misrepresentation renders the Contract voidable at the option of the City, notwithstanding any prior review or acceptance by the City of any materials containing such a misrepresentation. In addition, the City may debar Contractor, assert any contract claims or seek other civil or criminal remedies as a result of a misrepresentation (including costs of replacing a terminated Contractor pursuant to MCC Sect. 1-21-010).

3.3.10.2. MacBride Principles Ordinance, MCC Sect. 2-92-580

This law promotes fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

If this contract was let by a competitive bidding process as set forth in the Municipal Purchasing Act for Cities of 500,000 or More Population, in accordance with MCC Sect. 2-92-580 if the primary Contractor conducts any business operations in Northern Ireland, it is hereby required that the Contractor will make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section will not apply to contracts for which the City receives funds administered by the United States Department of Transportation (USDOT) except to the extent Congress has directed that USDOT not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the USDOT.

3.3.10.3. City Hiring Plan Prohibitions

- A. The City is subject to the June 16, 2014 "City of Chicago Hiring Plan" (the "2014 City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.
- B. Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a Subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Contract are employees or Subcontractors of Contractor, not employees of the City of

Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.

- C. Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Contract, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.
- D. In the event of any communication to Contractor by a City employee or City official in violation of paragraph B above, or advocating a violation of paragraph C above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Contract. Contractor will also cooperate with any inquiries by OIG Hiring Oversight.

3.3.10.4. Inspector General

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Ch. 2-56. Contractor understands and will abide by all provisions of MCC Ch. 2-56.

All subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

3.3.10.5. Duty to Report Corrupt Activity

Pursuant to MCC 2-156-018, it is the duty of the Contractor to report to the Inspector General, directly and without undue delay, any and all information concerning conduct which it knows to involve corrupt activity. "Corrupt activity" means any conduct set forth in Subparagraph (a)(1), (2) or (3) of Section 1-23-020 of the MCC. Knowing failure to make such a report will be an event of default under this Contract. Reports may be made to the Inspector General's toll free hotline, 866-IG-TIPLINE (866-448-4754).

3.3.10.6. Electronic Mail Communication

Electronic mail communication between Contractor and City employees must relate only to business matters between Contractor and the City.

3.3.10.7. EDS Update Obligation

Contractor is required to notify the City and update the EDS whenever there is a change in circumstances that makes any certification or information provided in an EDS inaccurate, obsolete or misleading. Failure to notify the City and update the EDS is grounds for declaring the Contractor in default, termination of the Contract for default, and declaring that the Contractor is ineligible for future contracts.

3.3.10.8. Wheel Tax (City Sticker)

Contractor must pay all Wheel Tax required by Chapter 3-56 of the MCC, as amended from time to time. Contractor should take particular notice of MCC 3-56-020 and MCC 3-56-125 which relate to payment of the tax for vehicles that are used on City streets or on City property by City residents.

For the purposes of Chapter 3-56, any business that owns, leases or otherwise controls a place of business within the City wherein motor vehicles or semi-trailers are stored, repaired, serviced, or loaded or unloaded in connection with the business is also considered to be a City resident.

3.3.10.9. Participation By Other Local Government Agencies

If Contractor consents, other local government agencies may be eligible to participate in this Contract pursuant to the terms and conditions of this Contract if such agencies are authorized, by law or their governing bodies, to execute such purchases, and if such authorization is allowed by the Chief Procurement Officer, if such purchases have no net adverse effect on the City and result in no diminished services from the bidder to the City's user departments pursuant to such purchases. Examples of such Local Government Agencies are: Board of Education, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier and Exposition Authority (McCormick Place, Navy Pier), and the Municipal Courts. Said purchases shall be made upon the issuance of a purchase order directly from the Local Government Agency. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

3.3.11. Compliance with Environmental Laws and Related Matters

3.3.11.1. Definitions

For purposes of this section, the following definitions shall apply:

Environmental Agency: An Environmental Agency is any governmental agency having responsibility, in whole or in part, for any matter addressed by any Environmental Law. An agency need not be responsible only for matters addressed by Environmental Law(s) to be an Environmental Agency for purposes of this Contract.

Environmental Claim: An Environmental Claim is any type of assertion that Contractor or any Subcontractor is liable, or allegedly is liable, or should be held liable, under any Environmental Law, or that Contractor or any Subcontractor has or allegedly has violated or otherwise failed to comply with any Environmental Law. A non-exhaustive list of Environmental Claims includes, without limitation: demand letters, lawsuits and citations of any kind regardless of originating source.

Environmental Law: An Environmental Law is any Law that in any way, directly or indirectly, in whole or in part, bears on or relates to the environment or to human health or safety. A non-exhaustive list of Environmental Laws includes without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. 5101, *et seq.*, the Clean Air Act, 42 U.S.C. 7401, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*, the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, the Illinois Occupational Safety and Health Act, 820 ILCS 219/1, *et seq.*, Chapters 7-28 and 11-4 of the Chicago Municipal Code, and all related rules and regulations.

Law(s): The word "Law" or "Laws," whether or not capitalized, is intended in the broadest possible sense, including without limitation all federal, state and local: statutes; ordinances; codes; rules; regulations; administrative and judicial orders of any kind; requirements and prohibitions of permits, licenses or other similar authorizations of any kind; court decisions; common law; and all other legal requirements and prohibitions.

Routine: As applied to reports or notices, "routine" refers to a report or notice that must be made, submitted or filed on a regular, periodic basis (e.g., quarterly, annually, biennially) and that in no way arises from a spill or other release or any kind, or from an emergency response situation, or from any actual, possible or alleged noncompliance with any Environmental Law.

3.3.11.2. Joint Ventures

If Contractor or any Subcontractor is a joint venture, then every party to every such joint venture is deemed a Subcontractor for purposes of this section, which is entitled "Compliance with Environmental Laws and Related Matters" and every subsection thereof.

3.3.11.3. Compliance With Environmental Laws

As part of or in addition to its obligation to observe and comply with all applicable laws, Contractor must observe and comply with all applicable Environmental Laws and ensure that all Subcontractors observe and comply with all applicable Environmental Laws.

Any noncompliance, by Contractor or any Subcontractor, with any Environmental Law during the time that this Contract is effective is an event of default, regardless of whether the noncompliance relates to performance of this Contract. This includes without limitation any failure by Contractor or any Subcontractor to keep current, throughout the term of this Contract, all insurance certificates, permits and other authorizations of any kind that are required, directly or indirectly, by any Environmental Law.

3.3.11.4. Costs

Any cost arising directly or indirectly, in whole or in part, from any noncompliance, by Contractor or any Subcontractor, with any Environmental Law, will be borne by the Contractor and not by the City. This includes, but is not limited to, any cost associated with removal of waste or other material from a facility lacking any required permit. No provision of this Contract is intended to create or constitute an exception to this provision.

3.3.11.5. Proof of Noncompliance; Authority; Cure

Any adjudication, whether administrative or judicial, against Contractor or any Subcontractor, for a violation of any Environmental Law, is sufficient proof of noncompliance, and therefore of an event of default, for purposes of this Contract.

Any citation issued to/against Contractor or any Subcontractor, by any government agent or entity, alleging a violation of any Environmental Law, is sufficient proof of noncompliance for purposes of this Contract, and therefore of an event of default, if the citation contains or is accompanied by, or the City otherwise obtains, any evidence sufficient to support a reasonable conclusion that a violation has occurred.

Any other evidence of noncompliance with any Environmental Law is sufficient proof of noncompliance for purposes of this Contract, and therefore of an event of default, if the evidence is sufficient to support a reasonable conclusion that noncompliance has occurred.

The CPO shall have the authority to determine whether noncompliance with an Environmental Law has occurred, based on any of the foregoing types of proof. Upon determining that noncompliance has occurred, s/he may in his/her discretion declare an event of default and may in his/her discretion offer Contractor an opportunity to cure the event of default, such as by taking specified actions, which may include without limitation ceasing and desisting from utilizing a Subcontractor.

The CPO may consider many factors in determining whether to declare an event of default, whether to offer an opportunity to cure, and if so any requirements for cure, including without limitation: the seriousness of the noncompliance, any effects of the noncompliance, Contractor's and/or Subcontractor's history of compliance or noncompliance with the same or other Laws, Contractor's and/or Subcontractor's actions or inaction towards mitigating the noncompliance and its effects, and Contractor's or Subcontractor's actions or inaction towards preventing future noncompliance.

3.3.11.6. Copies of Notices and Reports; Related Matters

If any Environmental Law requires Contractor or any Subcontractor to make, submit or file any non-Routine notice or report of any kind, to any Environmental Agency or other person, including without limitation any agency or other person having any responsibility for any type of emergency response activity, then Contractor must deliver a complete copy of the notice or report (or, in the case of legally required telephonic or other oral notices or reports, a comprehensive written

summary of same) to the Law Department within 24 hours of making, submitting or filing the original report.

Additionally, to the extent not already achieved by Contractor's compliance with this paragraph 3.3.10.6 and paragraph 3.3.10.8, Contractor must notify the Commissioner of the Department, within 24 hours of learning of any of the following:

- (i) any release, suspected release, or threatened release of any waste or other material relating to the work performed under the Contract;
- (ii) any notice of any kind received by Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, from an Environmental Agency or any other person, of or relating to any release, suspected release, or threatened release of any waste or other material relating to the work performed under the Contract.

This notification must be in writing, must be submitted by a fast method such as email, and must include, to the best of Contractor's knowledge at the time of submittal: the types and amounts of the waste or other material at issue; the location; the cause and any contributing factors; all actions taken, being taken, and intended to be taken by Contractor and any Subcontractors; and a copy of any notice received by Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor. Contractor must also provide written updates to the Commissioner by email or other method as indicated by the Commissioner whenever Contractor becomes aware of information that is different from or additional to the information provided in the initial notification.

The requirements of this provision apply, regardless of whether the subject matter of the required notice or report concerns performance of this Contract.

Failure to comply with any requirement of this provision is an event of default.

3.3.11.7. Requests for Documents and Information

If the Commissioner requests documents or information of any kind that directly or indirectly relate(s) to performance of this Contract, Contractor must obtain and provide the requested documents and/or information to the Commissioner within 5 business days.

Failure to comply with any requirement of this provision is an event of default.

3.3.11.8. Environmental Claims and Related Matters

Within 24 hours of receiving, or of any Subcontractor's receiving, notice of any Environmental Claim, Contractor must submit copies of all documents constituting or relating to the Environmental Claim to the Law Department. Thereafter, Contractor must submit copies of related documents if requested by the Law Department. These requirements apply, regardless of whether the Environmental Claim concerns performance of this Contract.

Failure to comply with any requirement of this provision is an event of default.

3.3.11.9. Preference for Recycled Materials

To the extent practicable and economically feasible and to the extent that it does not reduce or impair the quality of any work or services, Contractor must use recycled products in performance of the Contract pursuant to U.S. Environment Protection Agency (U.S. EPA) guidelines at 40 CFR Parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962.

3.3.11.10. No Waste Disposal in Public Way MCC 11-4-1600(E)

Contractor warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;

- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid waste;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Contract is executory, Contractor's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Contract, constitutes a breach of and an event of default under this Contract, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the CPO. Such breach and default entitles the City to all remedies under the Contract, at law or in equity.

This section does not limit the Contractor's and its Subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Contract.

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Contract, and may further affect the Contractor's eligibility for future contract awards.

3.4. Contract Disputes

3.4.1. Procedure for Bringing Disputes to the Department

The Contractor and using Department must attempt to resolve all disputes arising under this Contract in good faith, taking such measures as, but not limited to investigating the facts of the dispute and meeting to discuss the issue(s).

In order to bring a dispute to the Commissioner of a Department, Contractor must provide a general statement of the basis for its claim, the facts underlying the claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the claim. By submitting a Claim, the Contractor certifies that:

- A. The Claim is made in good faith;
- B. The Claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
- C. The amount of the Claim accurately reflects the amount that the claimant believes is due from the City; and
- D. The certifying person is duly authorized by the claimant to certify the Claim.

The Commissioner shall have 30 days from receipt of the Claim to render a written "final decision of the Commissioner" stating the Commissioner's factual and contractual basis for the decision. However, the Commissioner may take an additional period, not to exceed 10 days, to render the final decision. If the Commissioner does not render a "final decision of the Commissioner" within the prescribed time frame, then the Claim should be deemed denied by the Commissioner.

3.4.2. Procedure for Bringing Disputes before the CPO

Only after the Commissioner has rendered a final decision denying the Contractor's claim may a dispute be brought before the CPO.

If the Contractor and using Department are unable to resolve the dispute, prior to seeking any judicial action, the Contractor must and the using Department may submit the dispute to the CPO for an administrative decision based upon the written submissions of the parties. The party submitting the dispute to the CPO must include documentation demonstrating its good faith efforts to resolve the

dispute and either the other party's failure to exercise good faith efforts or both parties' inability to resolve the dispute despite good faith efforts.

The decision of the CPO is final and binding. The sole and exclusive remedy to challenge the decision of the CPO is judicial review by means of a common law writ of certiorari.

The administrative process is described more fully in the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago", which are available in City Hall, 121 N. LaSalle Street, Room 103, Bid and Bond Room, and on-line at:

http://www.cityofchicago.org/content/dam/city/depts/dps/RulesRegulations/Dispute_Regulations_2002.pdf

3.5. Events of Default and Termination

3.5.1. Events of Default

In addition to any breach of contract and events of default described within the Contract Documents, the following constitute an event of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the City.
- B. Contractor's material failure to perform any of its obligations under this Contract including the following:
- C. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services
- D. Failure to have and maintain all professional licenses required by law to perform the Services;
- E. Failure to timely perform the Services;
- F. Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the CPO or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
- G. Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;
- H. Discontinuance of the Services for reasons within Contractor's reasonable control;
- I. Failure to update promptly EDS(s) furnished in connection with this Contract when the information or responses contained in it or them is no longer complete or accurate;
- J. Failure to comply with any other term of this Contract, including the provisions concerning insurance and nondiscrimination; and
- K. Any change in ownership or control of Contractor without the prior written approval of the CPO, which approval the CPO will not unreasonably withhold.
- L. Contractor's default under any other Contract it may presently have or may enter into with the City during the life of this Contract. Contractor acknowledges and agrees that in the event of a default under this Contract the City may also declare a default under any such other agreements.
- M. Contractor's repeated or continued violations of City ordinances unrelated to performance under the Contract that in the opinion of the CPO indicate a willful or reckless disregard for City laws and regulations.
- N. Contractor's use of a subcontractor that is currently debarred by the City or otherwise ineligible to do business with the City.

3.5.2. Cure or Default Notice

The occurrence of any event of default permits the City, at the City's sole option, to declare Contractor in default.

The CPO will give Contractor written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice").

If a Cure Notice is sent, the CPO may in his/her sole discretion will give Contractor an opportunity to cure the default within a specified period of time, which will typically not exceed 30 days unless extended by the CPO. The period of time allowed by the CPO to cure will depend on the nature of the event of default and the Contractor's ability to cure. In some circumstances the event of default may be of such a nature that it cannot be cured. Failure to cure within the specified time may result in a Default Notice to the Contractor.

Whether to issue the Contractor a Default Notice is within the sole discretion of the CPO and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Contract

If the CPO issues a Default Notice, the CPO will also indicate any present intent the CPO may have to terminate this Contract. The decision to terminate is final and effective upon giving the notice. If the CPO decides not to terminate, this decision will not preclude the CPO from later deciding to terminate the Contract in a later notice, which will be final and effective upon the giving of the notice or on such later date set forth in the Default Notice.

When a Default Notice with intent to terminate is given, Contractor must discontinue any Services, unless otherwise directed in the notice.

3.5.3. Remedies

After giving a Default Notice, the City may invoke any or all of the following remedies:

- A. The right to take over and complete the Services, or any part of them, at Contractor's expense and as agent for Contractor, either directly or through others, and bill Contractor for the cost of the Services, and Contractor must pay the difference between the total amount of this bill and the amount the City would have paid Contractor under the terms and conditions of this Contract for the Services that were assumed by the City as agent for Contractor
- B. The right to terminate this Contract as to any or all of the Services yet to be performed effective at a time specified by the City;
- C. The right to seek specific performance, an injunction or any other appropriate equitable remedy;
- D. The right to seek money damages;
- E. The right to withhold all or any part of Contractor's compensation under this Contract;
- F. The right to deem Contractor non-responsible in future contracts to be awarded by the City.

3.5.4. Non-Exclusivity of Remedies

The remedies under the terms of this Contract are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

3.5.5. City Reservation of Rights

If the CPO considers it to be in the City's best interests, the CPO may elect not to declare default or to terminate this Contract. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Contractor to continue to provide the Services despite one or more events of

default, Contractor is in no way relieved of any of its responsibilities, duties or obligations under this Contract, nor does the City waive or relinquish any of its rights.

3.5.6. Early Termination

The City may terminate this Contract, in whole or in part, at any time by a notice in writing from the City to the Contractor. The effective date of termination will be the date the notice is received by the Contractor or the date stated in the notice, whichever is later.

After the notice is received, the Contractor must restrict its activities, and those of its Subcontractors, to activities pursuant to direction from the City. No costs incurred after the effective date of the termination are allowed unless the termination is partial.

Contractor is not entitled to any anticipated profits on services, work, or goods that have not been provided. The payment so made to the Contractor is in full settlement for all services, work or goods satisfactorily provided under this Contract. If the Contractor disputes the amount of compensation determined by the City to be due Contractor, then the Contractor must initiate dispute settlement procedures in accordance with the Disputes provision.

If the City's election to terminate this Contract for default pursuant to the default provisions of the Contract is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be deemed to be an early termination pursuant to this Early Termination provision.

3.6. Department-specific Requirements

Contractor must comply with the relevant user Department's specific requirements in the performance of this Contract if applicable.

3.6.1. Department of Aviation Standard Requirements

For purposes of this section "Airport" refers to either Midway International Airport or O'Hare International Airport, which are both owned and operated by the City of Chicago.

3.6.1.1. Confidentiality of Airport Security Data

Contractor has an ongoing duty to protect confidential information, including but not limited to any information exempt from disclosure under the Illinois Freedom of Information Act such as information affecting security of the airport ("Airport Security Data"). Airport Security Data includes any Sensitive Security Information as defined by 49 CFR Part 1520. Contractor acknowledges that information provided to, generated by, or encountered by Contractor may include Airport Security Data. If Contractor fails to safeguard the confidentiality of Airport Security Data, Contractor is liable for the reasonable costs of actions taken by the City, the airlines, the Federal Aviation Administration ("FAA"), or the Transportation Security Administration ("TSA") that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements, procurement and installation of security devices, and posting of guards. All Subcontracts or purchase orders entered into by the Contractor, with parties providing material, labor or services to complete the Work, must contain the language of this section. If the Contractor fails to incorporate the required language in all Subcontracts or purchase orders, the provisions of this section are deemed incorporated in all Subcontracts or purchase orders.

3.6.1.2. Aviation Security

This Contract is subject to the airport security requirements of 49 United States Code, Chapter 449, as amended, the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations in 14 CFR Part 107 and all other applicable rules and regulations promulgated under them. All employees providing services at the City's airports must be badged by the City. (See Airport Security Badges.) Contractor, Subcontractors and the respective employees of each are subject to such employment investigations, including criminal history record checks, as the Administrator of the Federal Aviation Administration ("FAA"), the Under Secretary of the Transportation Security Administration ("TSA"), and the City may deem

necessary. Contractor, Subcontractors, their respective employees, invitees and all other persons under the control of Contractor must comply strictly and faithfully with any and all rules, regulations and directions which the Commissioner, the FAA, or the TSA may issue from time to time may issue during the life of this Contract with regard to security, safety, maintenance and operation of the Airport and must promptly report any information regarding suspected violations in accordance with those rules and regulations.

Gates and doors that permit entry into restricted areas at the Airport must be kept locked by Contractor at all times when not in use or under Contractor's constant security surveillance. Gate or door malfunctions must be reported to the Commissioner without delay and must be kept under constant surveillance by Contractor until the malfunction is remedied.

3.6.1.3. Airport Security Badges

As part of airport operations and security, the Contractor must obtain from the airport badging office Airport Security Badges for each of his employees, subcontractors, material men, invitees or any person(s) over whom Contractor has control, which must be visibly displayed at all times while at the airport. No person will be allowed beyond security checkpoints without a valid Airport Security Badge. Each such person must submit signed and properly completed application forms to receive Airport Security Badges. Additional forms and tests may be required to obtain Airport Drivers Certification and Vehicle Permits. The application forms will solicit such information as the Commissioner may require in his discretion, including but not limited to name, address, date of birth (and for vehicles, driver's license and appropriate stickers). The Contractor is responsible for requesting and completing the form for each employee and subcontractor employee who will be working at the Airport and all vehicles to be used on the job site. Upon signed approval of the application by the Commissioner or his designee, the employee will be required to attend a presentation regarding airport security and have his or her photo taken for the badge. The Commissioner may grant or deny the application in his sole discretion. The Contractor must make available to the Commissioner, within one day of request, the personnel file of any employee who will be working on the project.

As provided in Aviation Security above, in order for a person to have an Airport Security Badge that allows access to the airfield or aircraft, a criminal history record check (CHRC) conducted by the Department of Aviation will also be required. The CHRC will typically include a fingerprint analysis by the Federal Bureau of Investigation and such other procedures as may be required by the TSA.

Airport Security Badges, Vehicle Permits and Drivers Licenses will only be issued based upon properly completed application forms. Employees or vehicles without proper credentials may be removed from the secured area and may be subject to fine or arrest. Contractor will be jointly and severally liable for any fines imposed on its employees or its Subcontractors employees.

In addition to other rules and regulations, the following rules related to Airport Security Badges, Vehicle Permits and Drivers Licenses must be adhered to:

- A. Each person must wear and display his or her Airport Security Badge on their outer apparel at all times while at the airport.
- B. All individuals operating a vehicle on the Aircraft Operations Area (AOA) must be familiar and comply with motor driving regulations and procedures of the State of Illinois, City of Chicago and the Department of Aviation. The operator must be in possession of a valid, State-issued Motor Vehicle Operators Driver's License. All individuals operating a vehicle on the AOA without an escort must also be in possession of a valid Aviation-issued Airport Drivers Permit.
- C. All operating equipment must have an Airport Vehicle Access Permit affixed to the vehicle at all times while operating on the Airport. All required City stickers and State Vehicle Inspection stickers must be valid.

- D. Individuals must remain within their assigned area and haul routes unless otherwise instructed by the Department of Aviation.
- E. The Contractors personnel who function as supervisors, and those that escort the Contractors equipment/operators to their designated work sites, may be required to obtain an added multi-area access designation on their personnel Airport Security Badge which must also be displayed while on the AOA.

3.6.1.4. General Requirements Regarding Airport Operations

3.6.1.4.1. Priority of Airport Operations

Where the performance of the Contract may affect airport operation, the Contractor must cooperate fully with the Commissioner and his representatives in all matters pertaining to public safety and airport operation. Whether or not measures are specifically required by this Contract, the Contractor at all times must maintain adequate protection to safeguard aircraft, the public and all persons engaged in the work and must take such precaution as will accomplish such end, without interference with aircraft, the public, or maintenance and operations of the airport.

The Contractor's attention is drawn to the fact that airport facilities and infrastructure, including but not limited to runways, taxiways, vehicular roadways, loadways, loading aprons, concourses, holdrooms, gates, and passenger right-of-ways, are being used for scheduled and unscheduled civilian air transportation. Arrivals and departures are under the control of the FAA control tower(s). Use of the Airport for air transportation takes precedence over all of the Contractor's operations. No extra compensation will be allowed for any delays brought about by the operations of the Airport which require that Contractor's work must be interrupted or moved from one part of the work site to another.

3.6.1.4.2. Interruption of Airport Operations

If Contractor requires interruption of Airport facilities or utilities in order to perform work, Contractor must notify the Deputy Commissioner in charge of the project at least five (5) working days in advance of such time and must obtain the Deputy Commissioner's approval prior to interrupting the service. Interruption of service must be kept to an absolute minimum, and to the extent practicable the work which occasions such interruptions must be performed in stages in order to reduce the time of each interruption. In case of interruptions of electrical services, service must be restored prior to sunset of the same day.

Prior to start of work, the Contractor must request of the Deputy Commissioner in charge of the project to provide specific requirements and instructions which are applicable to the particular work site areas, including, but not limited to, areas available for storage of any equipment, materials, tools and supplies needed to perform the work. Contractors must advise the Deputy Commissioner in charge of the project of the volume of equipment, materials, tools, and supplies that will be required in the secured areas of the airport in order to make arrangements for inspection of such equipment, materials, tools, and supplies at a security checkpoint.

3.6.1.4.3. Safeguarding of Airport Property and Operations

The Contractor must not permit or allow its employees, subcontractors, material men, invitees or any other persons over whom Contractor has control to enter or remain upon, or to bring or permit any equipment, materials, tools, or supplies to remain upon any part of the work site if any hazard to aircraft, threat to airport security, or obstruction of airport maintenance and operations, on or off the ground, would be created in the opinion of either the Commissioner or the Deputy Commissioner. Contractors must safeguard, and may be required to account for, all items brought beyond a security checkpoint, especially with respect to tools used in a terminal building.

3.6.1.4.4. Work on the Airfield

For any work on the airfield, between sunset and sunrise, any equipment and materials stored outside must be marked with red obstruction lights acceptable to the Commissioner and in conformity with all FAA requirements, including Advisory Circular 150/5345-43F. All obstruction lights must be kept continuously in operation between sunset and sunrise 7 days a week and also during any daylight periods when aircraft ceiling is below 500 feet and visibility is less than 5 miles. Information on ceiling and visibility may be obtained by the Contractor on request at the office of the Deputy Commissioner of Operations or from the FAA Control Tower Operator. Proper compliance with these obstruction light requirements is essential to the protection of aircraft and human life and the Contractor has the responsibility of taking the initiative at all times to be aware of ceiling and visibility conditions, without waiting for the FAA Control Tower Operator or any other City representative to ask the Contractor to post obstruction lights.

For any work on the airfield, the Contractor must furnish aircraft warning flags, colored orange and white, in two sizes, one size 2' x 3' for hand use, and one size 3' x 5'. Each separate group or individual in all work areas, regardless of whether or not near runways, taxiways or aprons, must display a flag which must be maintained vertical at all times. Each truck or other piece of equipment of the Contractor must have attached to it, in a vertical and clearly visible position, a warning flag of the larger size. Except as otherwise agreed by the Commissioner or his designee, all cranes or booms used for construction work on the airfield must be lowered to ground level and moved 200 feet off the runways, taxiways and aprons during all hours of darkness and during all daylight hours when the aircraft ceiling is below the minimums specified in this section.

The Contractor acknowledges the importance of fully complying with the requirements of this section in order to protect aircraft and human life, on or off the ground. Failure on the part of the Contractor to perform the work in accordance with the provisions of this section and to enforce same with regard to all subcontractors, material men, laborers, invitees and all other persons under the Contractor's control is an event of default.

3.6.1.4.5. Parking Restrictions

Prior to commencing work, the Contractor must provide the Deputy Commissioner in charge of the project with an estimate of the number of vehicles that will require parking. Contractors are encouraged to provide employee parking elsewhere and shuttle their employees to the work site. The Department of Aviation may, but is not required to, provide parking areas for a limited number of vehicles in designated storage areas. All other vehicles must be parked in the public parking lots at the Airport, and there will be no reduced rate or complimentary parking for such vehicles. Employees must not, at any time, park their personal automobiles, no matter how short the duration, in any drive, road, or any other non-parking lot location at the airport. Such vehicles will be subject to immediate towing at the employees expense.

3.6.1.5. General Civil Rights (Airport and Airway Improvement Act of 1982, Section 520)

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

3.6.2. Emergency Management and Communications (OEMC) Security Requirements

3.6.2.1. Identification of Workers and Vehicles

All employees and vehicles working within O.E.M.C facilities must be properly identified. All vehicles and personnel passes will be issued to the Contractor by the Executive Director, as required. Contractor, Subcontractors, and employees must return identification material to the

Executive Director upon completion of their respective work within the Project, and in all cases, the Contractor must return all identification material to the Executive Director after completion of the Project. Final Contract Payment will not be made until all passes issued have been returned to O.E.M.C Security.

3.6.2.2. Access to Facilities

For purposes of this section, "employee" refers to any individual employed or engaged by Contractor or by any Subcontractor. If the Contractor, or any employee, in the performance of this Contract, has or will have access to an Office of Emergency Management and Communications (O.E.M.C) facility, the City may conduct such background and employment checks, including criminal history record checks and work permit documentation, as the Executive Director of the Office of Emergency Management and Communications and the City may deem necessary, on the Contractor, any Subcontractor, or any of their respective employees. The Executive Director of the Office of Emergency Management and Communications has the right to require the Contractor to supply or provide access to any additional information the Executive Director deems relevant. Before beginning work on the project, Contractor must:

Provide the City with a list of all employees requiring access to enable the City to conduct such background and employment checks;

Deliver to the City consent forms signed by all employees who will work on the project consenting to the City's and the Contractor's performance of the background checks described in this Section; and

Deliver to the City consent forms signed by all employees who will require access to the O.E.M.C facility consenting to the searches described in this Section.

The Executive Director may preclude Contractor, any Subcontractor, or any employee from performing work on the project. Further, the Contractor must immediately report any information to the Executive Director relating to any threat to O.E.M.C infrastructure or facilities or the water supply of the City and must fully cooperate with the City and all governmental entities investigating the threat. The Contractor must, notwithstanding anything contained in the Contract Documents to the contrary, at no additional cost to the City, adhere, and cause its Subcontractors to adhere, to any security and safety guidelines developed by the City and furnished to the Contractor from time to time during the term of the Contract and any extensions of it.

Each employee whom Contractor wishes to have access to an O.E.M.C facility must submit a signed, completed "Area Access Application" to the O.E.M.C to receive a O.E.M.C Security Badge. If Contractor wishes a vehicle to have access to a O.E.M.C facility, Contractor must submit a vehicle access application for that vehicle. The applications will solicit such information as the Executive Director may require in his discretion, including name, address, date of birth (and for vehicles, driver's license and appropriate stickers). The Contractor is responsible for requesting and completing these forms for each employee who will be working at O.E.M.C facilities and all vehicles to be used on the job site. The Executive Director may grant or deny the application in his sole discretion. The Contractor must make available to the Executive Director, within one (1) day of request, the personnel file of any employee who will be working on the project.

At the Executive Director's request, the Contractor and Subcontractor must maintain an employment history of employees going back five years from the date Contractor began Work or Services on the project. If requested, Contractor must certify that it has verified the employment history as required on the form designated by the Executive Director. Contractor must provide the City, at its request, a copy of the employment history for each employee. Employment history is subject to audit by the City.

3.6.2.3. Security Badges and Vehicle Permits

O.E.M.C Security Badges and Vehicle Permits will only be issued based upon properly completed Area Access Application Forms. Employees or vehicles without proper credentials will not be allowed on O.E.M.C property.

The following rules related to Security Badges and Vehicle Permits must be adhered to:

- A. Each employee must wear and display the O.E.M.C Security Badge issued to that employee on his or her outer apparel at all times.
- B. At the sole discretion of the Executive Director and law enforcement officials, including but not limited to the Chicago Police Department, Cook County Sheriffs Office, Illinois State Police or any other municipal, state or federal law enforcement agency, all vehicles (and their contents) are subject to interior and/or exterior inspection entering or exiting O.E.M.C facilities, and all employees and other individuals entering or exiting O.E.M.C facilities are subject to searches. Vehicles may not contain any materials other than those needed for the project. The Executive Director may deny access to any vehicle or individual in his sole discretion.
- C. All individuals operating a vehicle on O.E.M.C property must be familiar and comply with motor driving regulations and procedures of the State of Illinois and the City of Chicago. The operator must be in possession of a valid, state-issued Motor Vehicle Operator's Driver License.
- D. All required City stickers and State Vehicle Inspection stickers must be valid.
- E. Individuals must remain within their assigned area and haul routes unless otherwise instructed by the City.
- F. Access to the Work sites will be as shown or designated on the Contract Documents Drawings or determined by the Executive Director. The Executive Director may deny access when, in his sole discretion, the vehicle or individual poses some security risk to O.E.M.C.

3.6.2.4. Gates and Fences

Whenever the Contractor receives permission to enter O.E.M.C property in areas that are exit/entrance points not secured by the City, the Contractor may be required to provide gates that comply with O.E.M.C design and construction standards. Contractor must provide a licensed and bonded security guard, subject to the Executive Director's approval and armed as deemed necessary by the Executive Director, at the gates when the gates are in use. O.E.M.C Security will provide the locks. Failure to provide and maintain the necessary security will result in an immediate closure by O.E.M.C personnel of the point of access.

Stockpiling materials and parking of equipment or vehicles near O.E.M.C security fencing is prohibited.

Any security fencing, gates, or alarms damaged by the Contractor or its Subcontractors must be manned by a licensed and bonded security guard of the Contractor at Contractor's expense until the damaged items are restored. Contractor must restore them to their original condition within an eight (8) hour period from the time of notice given by the Executive Director.

Temporary removal of any security fencing, gate or alarm to permit construction must be approved by the Executive Director, and Contractor must man the site by a licensed and bonded security guard, approved by and armed as deemed necessary by the Executive Director, at Contractor's expense, on a twenty-four (24) hour basis during the period of temporary removal. Contractor must restore the items removed to their original condition when construction is completed.

3.6.2.5. Hazardous or Illegal Materials

Unauthorized hazardous or illegal materials, including but not limited to hazardous materials as defined in 49 C.F.R. Parts 100-185 (e.g. explosives, oxidizers, radiological materials, infectious materials), contraband, firearms and other weapons, illegal drugs and drug paraphernalia, may not be taken on O.E.M.C property. Alcoholic beverages are also prohibited.

3.6.3. Chicago Police Department Security Requirements

As part of Police operations and security, the Contractor must obtain from the Police Department, Security Badges for each of its employees, subcontractors, material men, invitees or any person(s) over whom Contractor has control, which must be visibly displayed at all times while at any Police Department facility. No person will be allowed beyond security checkpoints without a valid Security Badge. Each such person must submit signed and properly completed application forms to receive Security Badges. The application forms will solicit such information as the Superintendent may require; including but not limited to name, address, date of birth (driver's license). The Contractor is responsible for requesting and completing the form for each employee and subcontractors employee. The Superintendent may grant or deny the application in his sole discretion. The Contractor must make available to the Superintendent, within one (1) day of request, the personnel file of any employee who will be working on the project.

In addition to other rules and regulations, the following rules related to Security Badges, must be adhered to:

- A. Each person must wear and display his or her Security Badge on their outer apparel at all times while at any Chicago Police Department facility.
- B. Individuals must remain within their assigned area unless otherwise instructed by the Chicago Police Department.

3.6.4. Department of Water Management ("DOWM") Security Requirements

3.6.4.1. Identification of Workers and Vehicles

All employees and vehicles working within DOWM facilities must be properly identified. All vehicles and personnel passes will be issued to the Contractor by the Commissioner, as required. Contractor, Subcontractors, and employees must return identification material to the Commissioner upon completion of their respective work within the Project, and in all cases, the Contractor must return all identification material to the Commissioner after completion of the Project. Final Contract Payment will not be made until all passes issued have been returned to DOWM Security.

3.6.4.2. Access to Facilities

For purposes of this section, "employee" refers to any individual employed or engaged by Contractor or by any Subcontractor. If the Contractor, or any employee, in the performance of this Contract, has or will have access to a Department of Water Management (DOWM) facility, the City may conduct such background and employment checks, including criminal history record checks and work permit documentation, as the Commissioner of the Department of Water Management and the City may deem necessary, on the Contractor, any Subcontractor, or any of their respective employees. The Commissioner of the Department of Water Management has the right to require the Contractor to supply or provide access to any additional information the Commissioner deems relevant. Before beginning work on the project, Contractor must:

Provide the City with a list of all employees requiring access to enable the City to conduct such background and employment checks;

Deliver to the City consent forms signed by all employees who will work on the project consenting to the City's and the Contractor's performance of the background checks described in this Section; and

Deliver to the City consent forms signed by all employees who will require access to the DOWM facility consenting to the searches described in this Section.

The Commissioner may preclude Contractor, any Subcontractor, or any employee from performing work on the project. Further, the Contractor must immediately report any information to the Commissioner relating to any threat to DOWM infrastructure or facilities or the water supply of the City and must fully cooperate with the City and all governmental entities investigating the threat. The Contractor must, notwithstanding anything contained in the Contract Documents to the contrary, at no additional cost to the City, adhere, and cause its Subcontractors to adhere, to any security and safety guidelines developed by the City and furnished to the Contractor from time to time during the term of the Contract and any extensions of it.

3.6.4.3. Security Badges and Vehicle Permits

Each employee whom Contractor wishes to have access to a DOWM facility must submit a signed, completed "Area Access Application" to the DOWM to receive a DOWM Security Badge. If Contractor wishes a vehicle to have access to a DOWM facility, Contractor must submit a vehicle access application for that vehicle. The applications will solicit such information as the Commissioner may require in his discretion, including name, address, date of birth (and for vehicles, driver's license and appropriate stickers). The Contractor is responsible for requesting and completing these forms for each employee who will be working at DOWM facilities and all vehicles to be used on the job site. The Commissioner may grant or deny the application in his sole discretion. The Contractor must make available to the Commissioner, within one (1) day of request, the personnel file of any employee who will be working on the project.

At the Commissioner's request, the Contractor and Subcontractor must maintain an employment history of employees going back five years from the date Contractor began Work or Services on the project. If requested, Contractor must certify that it has verified the employment history as required on the form designated by the Commissioner. Contractor must provide the City, at its request, a copy of the employment history for each employee. Employment history is subject to audit by the City.

DOWM Security Badges and Vehicle Permits will only be issued based upon properly completed Area Access Application Forms. Employees or vehicles without proper credentials will not be allowed on DOWM property.

The following rules related to Security Badges and Vehicle Permits must be adhered to:

- A. Each employee must wear and display the DOWM Security Badge issued to that employee on his or her outer apparel at all times.
- B. At the sole discretion of the Commissioner and law enforcement officials, including but not limited to the Chicago Police Department, Cook County Sheriffs Office, Illinois State Police or any other municipal, state or federal law enforcement agency, all vehicles (and their contents) are subject to interior and/or exterior inspection entering or exiting DOWM facilities, and all employees and other individuals entering or exiting DOWM facilities are subject to searches. Vehicles may not contain any materials other than those needed for the project. The Commissioner may deny access to any vehicle or individual in his sole discretion.
- C. All individuals operating a vehicle on DOWM property must be familiar and comply with motor driving regulations and procedures of the State of Illinois and the City of Chicago. The operator must be in possession of a valid, state-issued Motor Vehicle Operator's Driver License.
- D. All required City stickers and State Vehicle Inspection stickers must be valid.
- E. Individuals must remain within their assigned area and haul routes unless otherwise instructed by the City.

F. Access to the Work sites will be as shown or designated on the Contract Documents Drawings or determined by the Commissioner. The Commissioner may deny access when, in his sole discretion, the vehicle or individual poses some security risk to DOWM.

3.6.4.4. Gates and Fences

Whenever the Contractor receives permission to enter DOWM property in areas that are exit/entrance points not secured by the City, the Contractor may be required to provide gates that comply with DOWM design and construction standards. Contractor must provide a licensed and bonded security guard, subject to the Commissioner's approval and armed as deemed necessary by the Commissioner, at the gates when the gates are in use. DOWM Security will provide the locks. Failure to provide and maintain the necessary security will result in an immediate closure by DOWM personnel of the point of access.

Stockpiling materials and parking of equipment or vehicles near DOWM security fencing is prohibited.

Any security fencing, gates, or alarms damaged by the Contractor or its Subcontractors must be manned by a licensed and bonded security guard of the Contractor at Contractor's expense until the damaged items are restored. Contractor must restore them to their original condition within an eight (8) hour period from the time of notice given by the Commissioner.

Temporary removal of any security fencing, gate or alarm to permit construction must be approved by the Commissioner, and Contractor must man the site by a licensed and bonded security guard, approved by and armed as deemed necessary by the Commissioner, at Contractor's expense, on a twenty-four (24) hour basis during the period of temporary removal. Contractor must restore the items removed to their original condition when construction is completed.

3.6.4.5. Hazardous or Illegal Materials

Unauthorized hazardous or illegal materials, including but not limited to hazardous materials as defined in 49 C.F.R. Parts 100-185 (e.g. explosives, oxidizers, radiological materials, infectious materials), contraband, firearms and other weapons, illegal drugs and drug paraphernalia, may not be taken on DOWM property. Alcoholic beverages are also prohibited.

ARTICLE 4. TERMS FOR FAA AIP FEDERALLY-FUNDED PROFESSIONAL SERVICES

In accordance with FAA Advisory Circular 150/5100-14D, these provisions apply to Federal Aviation Administration ("FAA") AIP funded Contracts. To the extent that these terms conflict with the terms in the Standard Terms and Conditions, these terms will apply.

4.1. General Civil Rights Provision

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

4.2. Civil Rights Act Of 1964, Title VI, Compliance With Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

4.2.1. Compliance with Regulations

The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities as listed in Appendix E of Appendix 4 of FAA Order 1400.11, *Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration* ("Acts and Regulations"), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

4.2.2. Non-discrimination

The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

4.2.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4.2.4. Information and Reports

The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

4.2.5. Sanctions for Noncompliance

In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or

- b. Cancelling, terminating, or suspending a contract, in whole or in part.

4.2.6. Incorporation of Provisions

The contractor will include the provisions of paragraphs 4.2.1. through 4.2.6. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4.3. Airport and Airway Improvement Act Of 1982, Section 520 - General Civil Rights Provisions

The Contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

4.4. Disadvantaged Business Enterprise

4.4.1. Contract Assurance (§26.13)

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT- assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the contractor from future bidding as non-responsible.

4.4.2. Prompt Payment (§26.29)

The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 14 days from the receipt of each payment the prime Contractor receives from the City. The prime Contractor agrees further to return retainage payments to each subcontractor within 14 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

4.5. Disadvantaged Business Enterprise – City Requirements

The Contractor acknowledges and agrees that certain portions of the Project are being funded by federal grants and that the Project is therefore subject to the special conditions regarding Disadvantaged Business Enterprises, implementing Provisions 511(a) and 520 of the Airport and Airway Improvement Act of 1982, and Executive Orders 11625, 12138, 12432, and the regulations promulgated pursuant thereto, including without limitation 49 CFR 26. The Contractor agrees that, in the performance of the Contract, it will abide by the "Special Conditions Regarding Disadvantaged Business Enterprise Commitment" included in the bid/proposal and contract documents.

Contractor is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of Contractor's willingness to do business with DBEs. Information about such institutions is available in the City of Chicago's DBE Program document, which is available on-line at www.cityofchicago.org/Purchasing; a hard copy of the DBE Program document is available at the City of Chicago, Procurement Services, Contracts and Supplies, City Hall, 121 N. LaSalle, Room 403, Chicago, IL 60602.

4.6. Lobbying and Influencing Federal Employees

No Federal appropriated funds shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

4.7. Access to Records and Reports

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period that is the longer of five years or as required by relevant retention schedules after final payment is made and all pending matters are closed.

4.8. Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4.9. Trade Restriction

The Contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration as applicable, may direct through the City cancellation of the contract at no cost to the Government.

Further, the Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The

contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Contractor shall provide immediate written notice to the sponsor if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration as applicable, may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

4.10. Energy Conservation Requirements

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

4.11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

4.12. Intellectual Property

4.12.1. Copyrights

Pursuant to 49 CFR Part 18.34, the FAA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

4.12.2. Rights to Inventions

Pursuant to 49 CFR Part 18.36(i)(8) ("Contract provisions") and FAA Order 5100.38, all rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

4.13. Termination of Contract

Pursuant to 49 CFR Part 18.36(i)(2) and FAA Order 5100.38, these terms apply to contracts funded by AIP funds and exceed \$10,000.

- a. The City may, by written notice, terminate this contract in whole or in part at any time, either for the City's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice

services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the City.

- b. If the termination is for the convenience of the City, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the City for any additional cost occasioned to the City thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment in the contract price shall be made as provided in paragraph b of this clause.
- e. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

4.14. Clean Air and Water Pollution Control

Pursuant to 49 CFR Part 18.36(i)(12), Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act, these terms apply to contracts that exceed \$100,000 and are financed under the AIP program.

Contractors and subcontractors agree:

- a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- c. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- d. To include or cause to be included in any construction contract or subcontract which exceeds \$ 100,000 the aforementioned criteria and requirements.

4.15. The Drug-Free Workplace Act of 1988, Pub. L. No. 200-690

Contractor is obligated to keep its work place free of illegal drugs and must take steps such as the following to ensure compliance with The Drug-Free Workplace Act:

(1) publish a statement and notify employees in writing that illegal drugs are prohibited in the work place; (2) publish and notify employees of the action the Contractor will take against violators of the drug prohibition policy; (3) establish a drug-free awareness program for employees; (4) notify employees that compliance with the drug prohibition is a condition of employment, and that employees must notify the Contractor of any violation of Federal or state drug abuse statutes occurring in the work place within 5 days of conviction; (5) notify the City within 10 days of receipt of an employee conviction notice; (6) take appropriate personnel action within 30 days of receipt of an employee conviction notice; (7) require that the convicted employee participate in an approved drug abuse assistance or rehabilitation program; and (8) make a good faith effort to maintain a drug-free work place during the term of this Agreement.

4.16. Texting When Driving

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted

drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

The Contractor must promote policies and initiatives for employees and other work personnel that decrease crashes by distracted drivers, including policies to ban text messaging while driving. The Contractor must include these policies in each third party subcontract involved on this project.

4.17. Preference for Recycled Products

To the extent practicable and economically feasible and to the extent that it does not reduce or impair the quality of the work, the Contractor agrees to use recycled products in the Project pursuant to U.S.

Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962.

4.18. Contract Workhours And Safety Standards Act Requirements

4.18.1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

4.18.2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

4.18.3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4.18.4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 4.18.1 through 4.18.4 (above and this paragraph) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

4.19. Veteran's Preference

In the employment of labor (except in executive, administrative, and supervisory positions), preference must be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

4.20. Federal Fair Labor Standards Act (Federal Minimum Wage); Occupational Safety and Health Act of 1970 (OSHA)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

4.21. Buy American Certification

The contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must submit the appropriate Buy America certification (below) with all bids or offers on AIP funded projects. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

ARTICLE 5. TERMS FOR TASK-ORDER PROFESSIONAL SERVICES CONTRACTS

5.1. Providing Services

The Contractor must not honor any verbal requests for Services or perform or bill for any Services without receipt of a written Purchase Order issued by the Department. Any work performed by the Contractor without a written Purchase Order is done at the Contractor's risk. Consequently, in the event a written Purchase Order is not provided by the City, the Contractor releases the City from any liability whatsoever to pay for any work performed without a Purchase Order.

Services will be determined on an as-needed basis and as described on a Task Order Request ("TOR") as described below. Only if the Contractor has successfully been awarded a Task Order will it then receive a Purchase Order (a.k.a. purchase order release, blanket order release, or sub-order) authorizing the Contractor to perform Services. Purchase Orders will indicate the specification number, purchase order number, project description, milestones, deadlines, funding, and other such pertinent information.

5.2. Task Orders

All Services must be authorized by a written Task Order. Contractor acknowledges and agrees that the City is under no obligation to issue any Task Orders.

As needed, upon the written approval of the Commissioner, the Department will issue a TOR specifically referencing this Contract, identifying the project, and setting forth the Services to be performed pursuant to a Task Order and a desired completion date. Contractor must respond by submitting a Task Order Proposal which must include: a cover letter, understanding and approach, project schedule, budget, fee, detailed cost breakdown in such detail as required for the specific task, documentation required to substantiate compliance with MBE/WBE or DBE participation requirements as applicable, a list of key personnel, and any other required information specified in the TOR, all of which must conform to the terms of the TOR and the terms and conditions of this Contract. Contractor must not respond to any TOR not approved in writing by the Commissioner. Costs associated with the preparation of Task Order proposals are not compensable under this Agreement and the City is not liable for any additional costs.

Following Consultant's submission of the Task Order Proposal, the Commissioner and the Chief Procurement Officer will review the proposal and may elect to approve it, reject it, or use it as a basis for further negotiations with the Consultant regarding the scope of the project and the project completion date. If the City and the Consultant negotiate the scope of the project and the project completion date, the Consultant must submit a revised Task Order Proposal (based upon such negotiations) to the City for approval.

All Task Orders are subject to the approval of the Chief Procurement Officer and no Task Order will become binding upon the City until it is approved, in writing, by the Chief Procurement Officer. Absent approval of a Task Order by the Chief Procurement Officer and issuance of a Purchase Order, the City will not be obligated to pay or have any liability, under any theory of recovery (whether under the Agreement, at law or in equity), to the Contractor for any Services provided by the Consultant pursuant to a Task Order, or otherwise.

Some Task Order services are subject to the approval by a state or federal agency or other third party, therefore Contractor must not commence its performance of the Services until it receives a Notice to Proceed.

If the Services to be performed under a Task Order are to be funded from a fund other than the fund identified by the fund number set forth in this Agreement, such change in funding must be approved by the Chief Procurement Officer and the Comptroller prior to the issuance of any Task Order funded through such fund, and the applicable fund number must be included in the Task Order form provided to the Consultant.

5.3. Notice to Proceed

After receiving a Task Order, Contractor will commence its Services immediately upon receipt of an executed Notice to Proceed issued by the Commissioner or his authorized designee.

5.4. Standard of Performance

Contractor must perform all Services required of it under this Contract with that degree of skill, care and diligence normally shown by a Contractor in the community performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Contract. Contractor acknowledges that it may be entrusted with or may have access to valuable and confidential information and records of the City and with respect to that information only, Contractor agrees to be held to the standard of care of a fiduciary.

Contractor must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide the City copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its Subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Contract.

If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Contract, at law or in equity.

Contractor shall not have control over, or charge of, and shall not be responsible for, construction means, methods, schedules, or delays, or for safety precautions and programs in connection with construction work performed by others.

To the extent they exist, the City may furnish structural, mechanical, chemical, air, and water pollution and hazardous materials tests, and other laboratory and environmental tests, inspections, and reports required by law or by authorities having jurisdiction over any work, or reasonably requested by Contractor.

In the event Contractor's Services include any remodeling, alteration, or rehabilitation work, City acknowledges that certain design and technical decisions shall be made on assumptions based on available documents and visual observations of existing conditions.

5.5. Deliverables

In carrying out its Services, Contractor must prepare or provide to the City various Deliverables.

"Deliverables" include work product, produced by Contractor, including but not limited to written reviews, reports, recommendations, charts, analysis, designs, plans, specifications, drawings, or other similar products.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Contract or reasonably necessary for the purpose for which the City made this Contract. If the City determines that Contractor has failed to comply with the foregoing standards, the City has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Contract.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Contract and the City's acceptance of partial or incomplete Deliverables in no way relieves Contractor of its commitments under this Contract.

5.6. Additional Services

Additional Services means those Services which are within the general scope of Services of this Contract, but beyond the description of services in the Detailed Specifications and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Contract. Any Additional

Services requested by the Department require the approval by the City through a formal amendment pursuant to Section 1.4.9 of the Standard Terms and Conditions before Contractor is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

5.7. Purchase Order Increases

The City may unilaterally authorize an increase to the upper limit amount of a Purchase Order; the signature of Contractor is not required.

5.8. Timeliness of Performance

Contractor must provide the Services and Deliverables within the term and within the time limits required under this Contract, pursuant to Detailed Specifications or as specified in the applicable Task Order or Purchase Order. Further, Contractor acknowledges that TIME IS OF THE ESSENCE and that the failure of Contractor to comply with the time limits may result in economic or other losses to the City.

Neither Contractor nor its agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

5.9. Approvals

Whenever Contractor is required to obtain prior written approval, the effect of any approval that may be granted pursuant to Contractor's request is prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event is approval permitted to apply retroactively to a date before the approval was requested.

5.10. Suspension

The City may at any time request that Contractor suspend its Services, or any part of them, by giving 15 days prior written notice to Contractor or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Contractor must promptly resume its performance of the Services under the same terms and conditions as stated in this Contractor upon written notice by the Chief Procurement Officer and such equitable extension of time as may be mutually agreed upon by the Chief Procurement Officer and Contractor when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Contractor as a result of recommencing the Services must be treated in accordance with the compensation provisions of this Contract.

5.11. Personnel

5.11.1. Adequate Staffing

Contractor must, upon receiving a fully executed copy of this Contract, assign and maintain during the term of this Contract and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. The level of staffing may be revised from time to time by notice in writing from Contractor to the City with a detailed explanation and/or justification only with prior written consent of the Commissioner, which consent the Commissioner will not withhold unreasonably. The City may also from time to time request that the Contractor adjust staffing levels to reflect workload and level of required Services or Additional Services.

5.11.2. Key Personnel

In selecting the Contractor for this Contract the City relied on the qualifications and experience of those persons identified by Contractor by name as performing the Services ("Key Personnel"). Contractor must not reassign or replace Key Personnel without the written consent of the Commissioner, which consent the Commissioner will not unreasonably withhold. The Commissioner may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Contract by one or more Key Personnel. Upon that notice Contractor must immediately suspend the services of such person(s) and provide a replacement of comparable qualifications and experience who is

acceptable to the Commissioner. Contractor's Key Personnel, if any, are identified in the Scope of Services / Detailed Specifications portion of this Contract.

5.11.3. Salaries and Wages

Contractor and any subcontractors must pay all salaries and wages due all employees performing Services under this Contract unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Contract Contractor underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Contractor, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Contract and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Contractor to the respective employees to whom they are due. The parties acknowledge that this paragraph is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

5.12. Ownership of Documents

Except as otherwise agreed to in advance by the Commissioner in writing, all Deliverables, data, findings or information in any form prepared or provided by Contractor or provided by City under this Contract are property of the City, including all copyrights inherent in them or their preparation. During performance of its Services, Contractor is responsible for any loss or damage to the Deliverables, data, findings or information while in Contractor's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at Contractor's expense. If not restorable, Contractor must bear the cost of replacement and of any loss suffered by the City on account of the destruction. Notwithstanding the foregoing, Contractor shall retain all rights to its standard details and specifications and proprietary software, and nothing in this section shall be construed to be a transfer of rights which are not owned by Contractor.

5.13. Copyright Ownership and other Intellectual Property

Contractor and the City intend that, to the extent permitted by law, the Deliverables to be produced by Contractor at the City's instance and expense under this Contract are conclusively considered "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 et seq., and that the City will be the sole copyright owner of the Deliverables and of aspects, elements and components of them in which copyright can subsist, and which are owned and transferable by, and of all rights to apply for copyright registration or prosecute any claim of infringement. To the extent that any Deliverable does not qualify as a "work made for hire", Contractor hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyright and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Contract and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Notwithstanding the foregoing, Contractor shall retain all rights to its standard details and specifications and proprietary software, and nothing in this section shall be construed as a transfer of rights, which are not owned by Contractor. Contractor shall have no liability or duty whatsoever for any modification or change of the Deliverables or work, without Contractor's direct involvement and consent.

Contractor will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Contractor warrants to the City, its successors and assigns, that, on the date of delivery, except as expressly stated otherwise in writing to the Commissioner or before that date: (a) Contractor will be the lawful owner of good and marketable title in and to the copyrights for the Deliverables it prepared, (b) Contractor will have the legal rights to fully assign the copyrights, (c) Contractor will not assign any copyrights and will not grant any licenses, exclusive or nonexclusive, to any other party (except pursuant to

(3) below), (d) Contractor is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables, (e) the Deliverables will be complete, entire and comprehensive within the standard of performance under Section 2.3 of this Contract, and (f) the Deliverables will constitute works of original authorship.

5.13.1. Patents

If any invention, improvement, or discovery of the Contractor or its Subcontractors is conceived or first actually reduced to practice during performance of or under this Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor must notify the City immediately and provide the City a detailed report regarding such invention, improvement, or discovery. If the City determines that patent protection for such invention, improvement, or discovery should be sought, Contractor agrees to seek patent protection for such invention, improvement, or discovery and to fully cooperate with the City throughout the patent process. The Contractor must transfer to the City, at no cost, the patent in any invention, improvement, or discovery developed under this Contract and any patent rights to which the Contractor purchases ownership with funds provided to it under this Contract.

5.13.2. Intellectual Property Indemnity

Without limiting any of its other obligations under this Contract and in addition to any other obligations to indemnify under this Contract, Contractor must, upon request by the City, indemnify, save, and hold harmless the City, and if this Contract is federally funded the Federal Government, and their respective officers, agents, and employees acting within the scope of their original duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any Deliverables furnished under the Contract. The Contractor is not required to indemnify the City or Federal Government for any such intellectual property liability arising out of the wrongful acts of employees or agents of the City or Federal Government.

5.14. Compliance with the Americans with Disabilities Act and Other Laws Concerning Accessibility

Contractor covenants that all designs, plans and drawings produced or utilized under this Contract will address and comply with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities or environmentally limited persons including the following: the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"); the Architectural Barriers Act, Pub. L. 90-480 (1968), and the Uniform Federal Accessibility Standards ("UFAS"); and the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq., and all regulations promulgated thereunder, see Illinois Administrative Code, Title 71, Chapter 1, Section 400.110. If the above standards are inconsistent, Contractor must assure that its designs, plans, and drawings comply with the standard providing the greatest accessibility. Also, Contractor must, prior to construction, review the plans and specifications to insure compliance with these standards. If Contractor fails to comply with the foregoing standards, the City may, without limiting any of its remedies set forth in this contract or otherwise available at law, in equity or by statute, require Contractor to perform again, at no expense, all services required to be re-performed as a direct or indirect result of such failure.

5.15. Cooperation

Contractor must at all times cooperate fully with the City and act in the City's best interests. If this Contract is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to assure an orderly transition to another provider of the services, if any, orderly demobilization of its own operations in connection with the services, uninterrupted provision of services during any transition period and must otherwise comply with the reasonable requests and requirements of the City in connection with the termination or expiration.

5.16. Reimbursement for Travel

Reimbursable travel is not anticipated to be necessary for the performance of this Contract; travel by Contractor personnel to and from worksites will be part of Contractor's overall pricing. In the event that reimbursable travel is required and is authorized by the City, travel expenses will be reimbursed only in accordance with the City of Chicago Travel Reimbursement Guidelines current at the time of travel. The Guidelines may be downloaded from the Internet at: <http://www.cityofchicago.org/Forms>.

The direct link is:

http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/Forms/CityofChicago_TravelGuidelines.pdf.

ARTICLE 6. SCOPE OF WORK AND DETAILED SPECIFICATIONS

6.1. Scope of Services

This Contract is for ON-CALL ARCHITECTURE AND ENGINEERING SERVICES FOR THE AIRPORT RESIDENTIAL SOUND INSULATION PROGRAM.

More specifically, the Services that Consultant must provide are described in **Exhibit 1**, "Scope of Services and Time Limits for Performance."

This description of Services is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Contract.

6.2. List of Key Personnel

Key Personnel are (or are listed in) **Exhibit 1**, "Scope of Services.

6.3. Term of Performance

This Contract takes effect as of the Effective Date and continues for Sixty (60) months, unless terminated earlier pursuant to the Termination provision, or extended according to the terms of the Contract Extension Option provision in the Standard Terms and Conditions article of this Contract, or the Contract Extension Option below.

The City will establish the start and expiration dates at the time of formal award and release of this contract.

6.4. Contract Extension Option

The City has the option to extend the term of this Contract for two additional one (1) - year terms beyond the 60 -month term set forth above, subject to acceptable performance by the Contractor and contingent upon the appropriation of sufficient funds for the procurement of services provided for in this Contract.

Before expiration of the then current term, the Chief Procurement Officer will give the Consultant notice, in writing, that the City is exercising its option to renew the Contract for the approaching option period. The date on which the Chief Procurement Officer gives notice is the date the notice is mailed, if it is mailed, or the date the notice is delivered, if sent by courier or messenger service. After notification, the Contract will be amended to reflect the term extension.

The 181 day extension for the purposes of providing continuity of service, described in the Standard Terms and Conditions article of this Contract, may be exercised in lieu of an option period or following the exhaustion of all option periods and does not require formal amendment of the Contract.

6.5. Payment

6.5.1. Basis of Payment

The City will pay Contractor according to the Schedule of Compensation in the attached **Exhibit 2** for the completion of the Services in accordance with this Agreement, including the standard of performance found in "Special Conditions for Professional Services Contracts," above.

6.5.2. Method of Payment

Contractor must submit monthly invoices to the City for costs billed, as outlined in the Schedule of Compensation in **Exhibit 2**. The invoices must be in such detail as the City requests. The City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

6.5.3. Centralized Invoice Processing

Unless stated otherwise in the Detailed Specifications, this Contract is subject to Centralized Invoice Processing ("CIP"). Invoices must be submitted directly to the Comptroller's office by US Postal Service mail to the following address as appropriate:

Invoices for any City department other than the Department of Aviation:

Invoices
City of Chicago, Office of the City Comptroller

121 N. LaSalle St., Room 700, City Hall
Chicago, IL 60602

Invoices for the Department of Aviation:

Chicago Department of Aviation
10510 W. Zemke Blvd.
P.O. Box 66142
Chicago, IL 60666
Attn: Finance Department

OR

Invoices for any department, including Aviation, may be submitted via email to:
invoices@cityofchicago.org with the word "INVOICE" in the subject line.

All invoices must be signed, marked "original," and include the following information or payment will be delayed:

- Invoice number and date
- Contract/Purchase Order number
- Blanket Release number (if applicable)
- Vendor name and/or number
- Remittance address
- Name of City Department that ordered the goods or services
- Name and phone number of your contact at the ordering department
- Invoice quantities, commodity codes, description of deliverable(s)
- Amount due
- Receipt number (provided by the ordering department after delivery of goods/services)

Invoice quantities, service description, unit of measure, pricing and/or catalog information must correspond to the terms of the Bid Page(s).

If applicable, if invoicing Price List/Catalog items, indicate Price List/Catalog number, item number, Price List/Catalog date, and Price List/Catalog page number on the invoice.

Invoices for over-shipments or items with price/wage escalations will be rejected unless the Contract includes a provision for such an adjustment.

Freight, handling and shipping costs are not to be invoiced; deliveries are to be made F.O.B., City of Chicago. The City of Chicago is exempt from paying State of Illinois sales tax and Federal excise taxes on purchases.

Contractor must not submit invoices for less than \$500 unless a particular invoice is for last payment related to closeout of services.

6.5.4. Criteria for payment

The reasonableness, allocability, and allowability of any costs and expenses charged by Contractor under this contract will be determined by the Chief Procurement Officer and the Commissioner in their sole discretion.

In the event of a dispute between Contractor and the City as to whether any particular charge will be paid, or as to whether the amount of such charge is reasonable, allocable to the services under the contract, or allowable, the Contractor must, and the Department may, refer such dispute to the Chief Procurement Officer for resolution in accordance with the Contract Disputes section of this contract. The City will not withhold payment for undisputed sums on such invoice while a dispute is being resolved.

6.6. Funding

The source of funds for payments under this Contract is Fund number **86-0751-085- 4971-9071-0140**.

Payments under this Agreement must not exceed **\$5,000,000.00** without a written amendment in accordance with the Amendments section of the "Standard Terms and Conditions" above. Funding for this Contract is subject to the availability of funds and their appropriation by the City Council of the City.



CITY OF CHICAGO
Department of Procurement Services
Jamie L. Rhee, Chief Procurement Officer
121 North LaSalle Street, Room 806
Chicago, Illinois 60602-1284

Fax: 312-744-3281

**DBE SPECIAL CONDITIONS FOR FAA/FTA/FHWA (IDOT) FUNDED CONTRACTS
CONSTRUCTION, SERVICES, TASK ORDER SERVICES, AND SUPPLY**

ARTICLE 7. SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

PLACE HOLDER

ARTICLE 8. INSURANCE REQUIREMENTS

PLACE HOLDER

ARTICLE 9. SIGNATURE PAGE

Contract Number: <<click and type number>>

Specification Number: **466569**

Contractor (Vendor) Name: <<click and type name>>

Total Amount (Value): <<click and type number>>

Fund Chargeable: <<click and type number>>

SIGNED at Chicago, Illinois:

CONTRACTOR:

<<click and type name>>

By: _____

Name: _____

Its: _____

Attest: _____

State of _____; County of _____

This instrument was acknowledged before me on _____ (date) by _____

as President (or other authorized officer) and _____ as Secretary of

_____ (name of party on behalf of whom instrument was executed).

Notary Public

Commission Expires

CITY OF CHICAGO

By: _____
Mayor _____ Date _____

Comptroller _____ Date _____

Chief Procurement Officer _____ Date _____

EXHIBITS

Exhibits follow this page. Remainder of page intentionally blank.

EXHIBIT 1: SCOPE OF WORK

Attach here.

EXHIBIT 2: COMPENSATION

Attach here.

EXHIBIT 3: INSURANCE CERTIFICATE OF COVERAGE

Attach here.

EXHIBIT 4: ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT(S)

Attach here.

EXHIBIT 5: DBE COMPLIANCE PLAN

Attach here.

Exhibit 4: Special Conditions Regarding DBE Participation



CITY OF CHICAGO
Department of Procurement Services
Jamie L. Rhee, Chief Procurement Officer
121 North LaSalle Street, Room 806
Chicago, Illinois 60602-1284
Fax: 312-744-3281

DBE SPECIAL CONDITIONS FOR FAA/FTA/FHWA (IDOT) FUNDED CONTRACTS CONSTRUCTION, SERVICES, TASK ORDER SERVICES, AND SUPPLY

ARTICLE 1. SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

Contractor must comply with the following terms and conditions where Work or Services are funded in whole or in part by any federal funds including but not limited to FHWA, FTA and FAA.

1.1. Policy and Terms

In the event of a conflict between these Special Conditions and 49 CFR Part 26, the provisions of 49 CFR Part 26 shall control.

It is the policy of the City that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, have the maximum opportunity to participate fully in the performance of contracts subject to 49 CFR Part 26. Contractor must not discriminate against any person or business on the basis of race, color, national origin or sex in the performance of this Contract. Contractor must carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation (DOT)-assisted contracts and take affirmative action to ensure that businesses owned by socially and economically disadvantaged individuals have full opportunity to participate.

The City has set an overall DBE Program Goal of 30%.

Failure to carry out the commitments and policies set forth in this Article constitutes a material breach of the Contract and may result in the termination of the Contract or such remedy as the City deems appropriate.

1.1.1. Contract-Specific DBE Participation Goal

The City sets contract-specific goals for participation in furtherance of reaching its overall DBE Program Goal.

For purposes of this contract, the City has set the following contract goal:

Contract DBE Participation Goal: 30% percent.

Note: if this contract is task-order based, goals will be set for the individual task orders; in the context of each task order, these provisions will apply to those task order goals as if they were an overall contract goal.

A bid or proposal may be rejected as non-responsive if the bidder/proposer fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract DBE Participation Goal by reaching out to DBEs to perform work on the contract:

- A. A DBE compliance plan demonstrating how the bidder/proposer plans to meet the Contract DBE Participation Goal (Schedule D, D-1 or D-3 and Schedule(s) C, C-1 or C-3); and/or
- B. Documentation of Good Faith Efforts to obtain DBE participation in this contract.

Note: Schedules D and C are used for contracts for construction work. Schedules D-1 and D-3 are used for contracts for services, and Schedules D-3 and C-3 are used for task order based contracts.

The bidder/proposer must make good faith efforts to obtain DBE participation in this contract. The commitment will be reflected in Schedule D, D-1 or D-3. The bidder/proposer must document that it has obtained enough DBE participation to meet the Contract DBE Participation Goal set forth above or, if unsuccessful in doing so, has made adequate Good Faith Efforts to meet the goal (see Section 1.7 "Good Faith Efforts"). If awarded the Contract, Contractor must expend not less than the committed percentage of the total Contract Price (including any amendments and modifications) for contract participation by DBEs.

For purposes of evaluating bidder/proposer's responsiveness, the Contract DBE Participation Goal will be a percentage of the total contract value. The Contract DBE Participation Goal applies to the total value of the contract, inclusive of all amendments and modifications. The Chief Procurement Officer also has the authority to review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by 10 percent of the initial award or \$50,000, whichever is greater, for opportunities to increase participation of DBEs already involved in the contract.

The Contract DBE Participation Goal may be met by the bidder/proposer's status as DBE, or by joint venture with one or more DBEs (but only work performed by the DBEs own forces will be counted), or by subcontracting a portion of the work to one or more DBEs, or by purchasing materials used in the performance of the contract from one or more DBEs or by any combination of the foregoing, as further described in Section 1.5, "Counting DBE Participation Towards the Contract DBE Participation Goal."

1.1.2. DBE Financial Institutions

Bidder/Proposer is encouraged to use financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of bidder/proposer's willingness to do business with DBEs. Information about such institutions is available in the City's DBE Program document. In addition, the Illinois Unified Certification Program (IL UCP) Disadvantaged Business Enterprises Directory is available via the internet at www.cityofchicago.org/procurement and in print at the City of Chicago, Bid and Bond Room, City Hall, 121 N. LaSalle, Room 301, Chicago, IL 60602.

1.1.3. DBE Participation Goals for Contract Modifications

The DBE Participation Goals established at the time of bid/proposal submission shall also apply to any modifications to the Contract after award. This is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with DBEs to meet the DBE Participation Goals.

- Contractor must assist the Construction Manager or User Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for DBE participation and at what rates.
- Contractor must produce a statement listing the DBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no DBE participation is available, an explanation of good faith efforts to obtain participation must be included.

The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of DBEs already involved in the Contract.

1.2. Definitions and Usage

Terms that are capitalized in these Special Conditions are defined terms and have the meanings set forth in 49 CFR Part 26.5, unless otherwise defined in these Special Conditions or the Contract Documents.

"Area of Specialty" means the description of a DBE firm's business which has been determined by the certifying agency to be most reflective of the DBE firm's claimed specialty or expertise. Each DBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory. Credit toward the Contract DBE Participation Goal is limited to the participation of firms performing within their Areas of Specialty.

NOTICE: The Department of Procurement Services does not make any representation concerning the ability of any DBE to perform work within its Area of Specialty. It is the responsibility of all bidders/proposers to determine the capability and capacity of DBE firms to satisfactorily perform the work proposed.

Certain terms are used in these Special Conditions to indicate the stage of bidding, proposing or contracting in which certain obligations arise. The term "proposer" means a firm responding to a request for proposals by the City for professional or technical services or other procurement not adaptive to competitive bidding; a bidder or proposer becomes a "contractor" after being awarded a contract by the City.

"Contractor" also means "Consultant," if Consultant is the term used for the entity that has entered into this agreement or contract with the City.

"Directory" means the IL UCP Disadvantaged Business Enterprises Directory, maintained by the City as well as all IL UCP participating agencies, that identifies all firms eligible to participate as DBEs. The Directory lists the firm's name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE. The City revises the Directory on a monthly basis. The Directory is available via the internet on the City's web site at www.cityofchicago.org/procurement, and in print at the City of Chicago, Bid and Bond Room 121 N. LaSalle St., Room 301, Chicago, Illinois, 60602. Bidder/Proposers are responsible for verifying the current certification status of all proposed DBE firms.

"Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern that (i) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, 51 percent of the stock is owned by one or more such individuals; (ii) whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; (iii) the personal net worth of the individuals who own it does not exceed the limit specified at 49 CFR Part 26; and (iv) it has been certified as a DBE in accordance with the procedures set out in 49 CFR Part 26.

"Joint Venture" means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

1.3. Third Party Challenges To Eligibility Of DBE Firm

As noted in 49 CFR Section 26.87, any third party (complainant) may file a complaint alleging that a currently certified DBE is ineligible. The complaint must be made in writing to the City and specify the alleged reasons why the firm is ineligible and include all available information relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged. The City, during its determination of findings, will notify the challenged party of the allegations and notify both parties in writing of the outcome. The confidentiality of the complainant's identity will be protected as provided in 49 CFR Section 26.109(b). If the City determines first, that there were not reasonable grounds presented in the complaint sufficient to justify an inquiry, then the City will notify the complainant and the challenged party of this determination and the reasons for it. During the pendency of any complaint, the presumption that the challenged party is a socially and economically disadvantaged will remain in effect.

1.4. Joint Ventures

Bidders/proposers may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture may consist of any combination of DBEs and non-certified firms as long as one member is a DBE.

A. The joint venture may be eligible for DBE participation credit towards the Contract Specific Goals only if:

1. The DBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The DBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid/contract to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive DBE credit for work performed by the DBE joint venture partner(s) equal to the value of work performed by the DBE with its own forces for a distinct, clearly defined portion of the work.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other DBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: DBE Affidavit of Joint Venture

Where the bidder/proposer's Compliance Plan includes the participation of any DBE as a joint venture partner, the bidder/proposer must submit with its bid or proposal a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the DBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the DBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the DBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the DBE joint venture partner; and
4. The DBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

Vague, general descriptions of the responsibilities of the DBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the DBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

D. DBE Participation Level in Joint Venture

Credit for participation by DBEs in joint ventures with non-DBEs does not require a minimum participation of 51 percent in venture ownership and control on the part of the DBE. Credit is based on the percentage of the work performed by the DBE's own forces. See Section 1.5, "Counting DBE Participation Toward the Contract DBE Participation Goal").

NOTE: The City requires that whenever a joint venture submits a bid/proposal as prime contractor, each joint venturer must separately sign the bid/proposal to the City on the pages marked TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR as applicable.

1.5. Counting DBE Participation Toward The Contract DBE Participation Goal

When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward the DBE Participation Goal, as described in 49 CFR 26.55.

Refer to this section when preparing the DBE compliance plan and completing Schedule D for guidance on what value of the participation by DBEs will be counted toward the stated DBE Participation Goal. The "Percent Amount of Participation" depends on whether and with whom a DBE subcontracts out any portion of its work and other factors.

Expenditures to a DBE contractor or subcontractor may be counted only if the DBE is performing a "commercially useful function" on the contract. The term "commercially useful function" is defined in 49 CFR 26.55(c). If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the City will rebuttably presume that the DBE is not performing a commercially useful function.

A contractor (and bidder/proposers in their proposals) may count only the following toward the Contract DBE Participation Goal and should report only the following to the Chief Procurement Officer:

A. The value of the work actually performed by a DBE, as described below:

1. For construction contracts and other contracts not covered by A.2., below:

The entire amount of that portion of a contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate). (See 49 CFR 26.55(a)(1).)

2. For contracts involving the provision of "bona fide services" (such as professional, technical, consultant or managerial services), or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract:

The entire amount of fees or commissions charged by a DBE for providing a bona fide service, provided that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The determination of whether the fee is reasonable and not excessive will be made by the City. (See 49 CFR 26.55(a)(2).)

3. When a DBE subcontracts part of the work of its contract to another firm:

The value of the subcontracted work may be counted toward the Contract DBE Participation Goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the Contract DBE Participation Goal. (See 49 CFR 26.55(a)(3).)

B. Joint Ventures: When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces is counted towards the Contract DBE Participation Goal. (See 49 CFR 26.55(b).)

C. Materials and Supplies: Regarding expenditures with a DBE for materials or supplies:

1. If the materials or supplies are obtained from a DBE "manufacturer," as that term is described in 49 CFR 26.55(e)(1), 100 percent of the cost of the materials or supplies. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described in the specifications.

2. If the materials or supplies are purchased from a DBE "regular dealer," as that term is described in 49 CFR 26.55(e)(2), 60 percent of the cost of the materials or supplies.

3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of materials and supplies themselves.

The City shall determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

D. Trucking Firms: If the DBE manages and supervises the entire trucking operation for which it is responsible on a particular contract and the DBE itself owns and operates at least one fully licensed, insured and operational truck used on the contract and all leased trucks display the name and identification number of the DBE, then:

1. The total value of the transportation services a DBE provides on the contract using trucks it owns, insures and operates using drivers it employs.
2. The total value of the transportation services a DBE provides on the contract using trucks leased from another DBE trucking firm, including an owner-operator who is certified as a DBE trucking firm, but only if the lease indicates that the DBE lessee has exclusive use of and control over the truck, or, if the truck is used for work for others with the DBE lessee's consent, then the lease must give the DBE lessee absolute priority over its use.
3. Only the value of the fee or commission the DBE receives under a lease arrangement with non-DBE firms for the lease of trucks used to provide transportation services on the contract but only if the lease indicates that the DBE has exclusive use of and control over the truck, or, if the truck works for others with the DBE's consent, then the lease must give the DBE absolute priority over its use.

E. Other Considerations:

1. **Firm Not Currently Certified:** If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26, subpart D, at the time of execution of the contract, do not count or report the firm's participation, except as provided in 49 CFR 26.87(i).
2. **Firm Whose Eligibility Has Been Removed:** Do not report the dollar value of work performed under a contract with a firm after it has ceased to be certified.
3. **Payment:** Do not report the participation of a DBE subcontractor until the amount to be counted toward the goal has been paid to the DBE.
4. **Area of Specialty:** Only the value of the dollars paid to the DBE firm for work that it performs in its Area of Specialty in which it is certified counts toward the DBE Participation Goal.

1.6. Procedure To Determine Bid/Proposal Compliance

The following Schedules and documents constitute the bidder's/proposer's DBE proposal, and must be submitted at the time of submission of proposals unless stated otherwise:

1.6.1. Schedule B: Affidavit of DBE/Non-DBE Joint Venture

Where the bidder/proposer's DBE proposal includes the participation of any DBE as a joint venturer prime or subcontractor, the bidder/proposer must submit, together with its bid/proposal, a Schedule B: Affidavit of DBE/Non-DBE Joint Venture with an attached copy of the joint venture agreement proposed among the parties. See Section 1.4 above, "Joint Ventures," for detailed requirements.

1.6.2. Schedule C, C-1 or C-3: Letter of Intent to Perform as a Subcontractor, Consultant, Subconsultant or Material Supplier

Bidder/proposer must submit a Schedule C, C-1 or C-3, for each DBE included on its Schedule D, D-1, or D-3 (including any DBE joint venture partners), signed by the respective DBE firm. Schedule C and D must be used for contracts for construction work, and Schedule C-1 and Schedule D-1 for all other contracts, except for task order based contracts, where Schedule C-3 and Schedule D-3 must be used instead.

Each Schedule C, C-1 or C-3 must accurately detail the work to be performed by the DBE firm and the agreed rates and prices to be paid. Each Schedule must specify the percentage of the dollar value of the DBE's subcontract that will be sublet to non-DBE and DBE contractors and be signed and dated by the DBE. Each Schedule must also include a separate sheet as an attachment on which the DBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the DBE in its Area of Specialty. If a facsimile copy of Schedule C, C-1 or C-3 has been submitted with the bid or proposal, an executed original Schedule C-1 must be submitted promptly by the bidder/proposer for each DBE included on the Schedule D, D-1 or D-3 after the date of bid or proposal opening.

Failure to submit any Schedule C, C-1, or C-3 as required by this Section will result in a Chief Procurement Officer's determination that a bid or proposal is "non-responsive." The Chief Procurement Officer has the discretion to apply additional suitable sanctions against any bidder/proposer who fails to comply with these requirements. Appropriate sanctions may include, without limitation, forfeiture of the bidder/proposer's bid deposit, rejection of

the bidder/proposer's bid, or suspension of the bidder/proposer's eligibility to enter into future contracting opportunities with the City.

1.6.3. Schedule D, D-1 or D-3: Affidavit of Prime Contractor Regarding DBEs

Bidders/Proposers must submit at the time specified in the request for proposals, a completed Schedule D or D-1 (or for Task Order based contracts, Schedule D-3, which must be submitted at the time specified in the request for task order proposals) committing them to the utilization of each listed DBE firm (*but see, Section 1.7, Good Faith Efforts*). The Schedule D, D-1 or D-3 must include the name, address, description of the work to be performed and dollar amount participation of each DBE subcontractor, supplier or consultant.

The bidder/proposer must use "Good Faith Efforts," as that term is described in Section 1.7 to meet the Contract DBE Participation Goal (i.e., the specific dollar amount of participation by each DBE firm included on its Schedule D-1 or D-3). The total dollar commitment to proposed DBE firms should equal the Contract DBE Participation Goal. Bidders/proposers are responsible for calculating the dollar equivalent of the Contract DBE Participation Goal as a percentage of their proposal. All commitments made by the bidder/proposer's Schedule D, D-1 or D-3 must conform to those presented in the submitted Schedule Cs, C-1s or C-3s.

A contractor may not modify its Compliance Plan after proposal opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders/proposers shall not be permitted to add DBEs after proposal opening to meet the Contract DBE Participation Goals, however, contractors are encouraged to add additional DBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder/proposer or contractor shall not reduce the dollar commitment made to any DBE in order to achieve conformity between the Schedule Cs/ C-1s/C-3s and Schedule D/D-1/D-3. All terms and conditions for DBE participation on the contract must be negotiated and agreed to between the bidder/proposer or contractor and the DBE prior to submission of the Compliance Plan. If a proposed DBE ceases to be available after submission of the Compliance Plan, the bidder/proposer or contractor must comply with the provisions of Section 1.10, "DBE Substitutions."

1.6.4. Schedule F: Report of Subcontractor Solicitations

All Bidders/Proposers must submit, together with their bid/proposal, a completed Schedule F report containing information on all subcontractors, DBEs and non-DBEs, solicited for participation in the contract. The Schedule F shall include the following subcontractor information:

Contractor name; Address; Contact person; DBE status; Type of work solicited

1.6.5. Letters of Certification

A copy of each proposed DBE firm's Letter of Certification from the IL UCP must be submitted with the bid or proposal if currently certified. All Letters of Certification issued by the IL UCP include a statement of the DBE firm's Area of Specialty. The DBE firm's scope of work, as detailed by its Schedule C, C-1, or C-3 must conform to its stated Area of Specialty.

NOTE: Failure to submit the following information at the time of submission of bids or proposals (or in the case of task order contracts, the time of submission of task order proposals) will render the bid or proposal non-responsive: the **names and addresses** of DBE firms that will participate in the contract (Schedule D, D-1 or D-3), a **description of the work** that each DBE will perform (Schedule D, D-1 or D-3), the **dollar amount** of the participation of each DBE firm participating (Schedule D, D-1 or D-3), **written documentation** of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal (Schedule D, D-1 or D-3), **written confirmation from the DBE** that it is participating in the contract as provided in the prime contractor's commitment (Schedule C, C-1 or C-3), **affidavit of joint venture** when a DBE participates in the contract for DBE credit as a joint venturer (Schedule B), **report on all subcontractors solicited** for participation in the contract (Schedule F) and if the Contract goal is not met, **evidence of good faith efforts**, as set out in Section 1.7, "Good Faith Efforts".

1.6.6. Procedure

- A. The submittals must have all blank spaces on the Schedule pages applicable to the subject specification filled in correctly.

Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidder/proposers are prohibited.

- B. During the period before award, the submitted documentation will be evaluated. As required under 49 CFR 26.109(c), all participants in the DBE Program, including the bidder/proposer, must give, upon request, earnest and prompt cooperation to the using department and the City's Chief Procurement Officer or his or her authorized delegate in submitting to interviews that may be necessary, or in allowing entry to places of business or in providing further documentation, or in soliciting the cooperation of a proposed DBE in providing such assistance. A bid/proposal may be treated as non-responsive by reason of the determination that the bidder/proposer was found to be unresponsive or uncooperative when asked for further information about the bid/proposal, or that false statements were made in the Schedules.
- C. Bidders/Proposers will not be permitted to modify their DBE proposal except as permitted to do so by the City. All terms and conditions stipulated for prospective DBE sub-contractors or suppliers therefore should be satisfactorily negotiated prior to the submission to the City of the bidder/proposer's DBE commitment as part of the DBE proposal. If circumstances arise, where a proposed DBE becomes no longer available, the process described in Section 1.10, DBE Substitutions, should be followed.
- D. When necessary in the interest of time, the City may treat a bid/proposal as non-responsive instead of granting extended time for a bidder/proposer to replace DBEs named in the DBE proposal that are later determined to be ineligible or unavailable.

1.7. Good Faith Efforts

1.7.1. Demonstration of Good Faith Efforts

In order for a bid/proposal to be responsive, at the time specified in the request for bids/proposals, the bidder/proposer must demonstrate it has made Good Faith Efforts to meet the Contract DBE Participation Goal. The demonstration is made in the form of the documentation described in Section 1.7.2, "Documenting Good Faith Efforts." The bidder/proposer can demonstrate it has made Good Faith Efforts to meet the Contract DBE Participation Goal either by:

- A. Meeting the Contract DBE Participation Goal, as provided in these Special Conditions, and documenting commitments for participation by DBE firms sufficient for this purpose; or
- B. Documenting, in the manner described below, adequate Good Faith Efforts to meet Contract DBE Participation Goal. This means bidders/proposers must submit at the time specified in the request for bids/proposals, documentation to show that it took all necessary and reasonable steps to achieve the Contract DBE Participation Goal or other requirements of 49 CFR Part 26, Appendix A, which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the bidder/proposer was not fully successful. The following are examples of documented actions the City may consider to determine whether the bidder/proposer made Good Faith Efforts:
 - i. Soliciting through all reasonable and available means (e.g., attendance at pre-bid/proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - ii. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the Contract DBE Participation Goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even where the prime contractor might otherwise prefer to perform these work items with its own forces.
 - iii. Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - iv. Negotiating in good faith with interested DBEs. It is the bidder/proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of

DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder/proposer's failure to meet the Contract DBE Participation Goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract within its own organization does not relieve the bidder/proposer of the responsibility to make Good Faith Efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- v. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder/proposer's efforts to meet the Contract DBE Participation Goal.
- vi. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the City or the bidder/proposer.
- vii. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- viii. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

1.7.2. Documentation of Good Faith Efforts

The following 11 types of documentation, as applicable to the situation, will be considered by the Chief Procurement Officer in determining whether the bidder/proposer has made Good Faith Efforts to meet the Contract DBE Participation Goal. The documentation must be submitted at the time of submission of proposals or the proposal will be deemed non-responsive.

- A. A detailed statement of efforts to identify and select portions of work identified in the request for proposals to certified DBE firms. Include copies of attendance logs from pre-bid/proposal meetings, advertisements and written notices, as applicable.
- B. A listing of all DBE firms contacted that includes:
 - names, address and telephone numbers of DBE firms solicited;
 - date and time of contact;
 - method of contact (written, telephone, facsimile transmittal, etc.)
 - name of the person contacted.
- C. Copies of letters or any other evidence of mailing that substantiates outreach to DBE vendors that includes:
 - project identification and location;
 - classification/commodity of work items for which quotations were sought;
 - date, item and location for acceptance of subcontractor bid proposals;
 - detailed statement which summarizes direct negotiations with appropriate DBE firms for specific portions of the work and indicates why negotiations were unsuccessful;

- affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve the Contract DBE Participation Goal by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on DBE subcontractors for the type of work that was solicited.
- D. Copies of proposed plans for selecting portions of the work to be performed by DBEs in order to increase the likelihood that the Contract DBE Participation Goal will be achieved.
- E. Evidence that the bidder/proposer negotiated in good faith with interested DBEs.
- F. Evidence that the bidder/proposer did not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- G. Evidence that the bidder/proposer made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance, as required by the City or the bidder/proposer.
- H. Evidence that the bidder/proposer made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- I. Evidence that the bidder/proposer has provided timely notice of the need for subcontractors to at least 50 percent of the DBEs listed in the City's Directory as being certified in the applicable Areas of Specialty. Proof of notification (e.g. certified mail receipt or facsimile transmittal receipt) prior to the date a bidder/proposer's DBE proposal is due is required for any proposal to be deemed responsive. The Chief Procurement Officer may contact the certified DBEs for verification of notification.
- J. Evidence that subcontractor participation is excessively costly. Subcontractor participation will be deemed excessively costly when the DBE subcontractor proposal exceeds the average price quoted by more than 15 percent. In order to establish that a subcontractor's quote is excessively costly, the bidder/proposer must provide the following information at the time specified in the request for proposals:
 1. A detailed statement of the work identified for DBE participation for which the bidder/proposer asserts the DBE quote(s) were excessively costly (in excess of 15 percent higher).
 - (A) a listing of all potential subcontractors contacted for a quotation on that work item;
 - (B) prices quoted for the subcontract in question by all such potential subcontractors for that work item.

OR

- 2. Other documentation that demonstrates to the satisfaction of the Chief Procurement Officer that the DBE proposals are excessively costly, even though not in excess of 15 percent higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - (A) the City's estimate for the work under a specific subcontract;
 - (B) the bidder/proposer's own estimate for the work under the subcontract;
 - (C) an average of the bona fide prices quoted for the subcontract;
 - (D) demonstrated increase in other contract costs as a result of subcontracting to the DBE or other firm.
- K. Copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. This is must be included in the documentation of Good Faith Efforts whenever a non-DBE subcontractor is selected over a DBE for work on the contract.

Note: The City reserves the right to modify this procedure when deemed appropriate.

1.8. Reporting

- A. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the DBEs included in their approved DBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- C. Once the prime contractor has reported payments made to each DBE, including zero dollar amount payments, the DBE will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
- D. All subcontract agreements between the contractor and DBE firms or any first tier non-certified firm and lower tier DBE firms must contain language requiring the DBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://chicago.mwdbe.com>

- E. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to DBE participation and the status of any DBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.

- F. The contractor shall maintain records of all relevant data with respect to the utilization of DBEs retaining these records for a period that is the longer of five years or as required by relevant retention schedules after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

- G. The contractor must make available upon request a copy of all DBE subcontracts. The contractor must ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with the provisions of 49 CFR Part 26.

1.9. Required Assurance

Contractor must comply with, and each subcontract Contractor signs with a subcontractor must include, the following assurance:

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT- assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the Contractor from future bidding as non-responsible.

1.10. DBE Substitutions

- A. Arbitrary changes by the bidder/proposer of the commitments earlier certified in the Schedule D, D-1 or D-3 are prohibited. Further, after once entering into each approved DBE subcontract, the bidder/proposer may neither terminate the subcontract, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without in each instance (i) having just cause, including situations where bidder/proposer's contract with the DBE includes termination for convenience; (ii) making Good Faith Efforts to find another DBE subcontractor to substitute for the original DBE (these Good Faith Efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the Contract DBE Participation Goal); and (iii) receiving the prior written approval of the City in all instances.

Unless the City provides written approval for the substitution of a DBE, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

1. The bidder/proposer must give the Chief Procurement Officer reasons that justify the bidder/proposer's terminating a DBE, reducing the scope of work to be performed by a DBE, or decreasing the price to a DBE. The substitution procedure will be as follows:

- a) The bidder/proposer/contractor must notify the Chief Procurement Officer as soon as possible in writing of an apparent necessity to reduce or terminate a DBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the Contract DBE Participation Goal. Prior to submitting notice to the Chief Procurement Officer, bidder/proposer/contractor must give notice in writing to the DBE subcontractor, with a copy to the Chief Procurement Officer, of its intent to request to terminate and/or substitute, and the reason for the request.
- b) Bidder/proposer/contractor must give the DBE five days to respond to the notice and advise the City and bidder/proposer/contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the City should not approve the bidder/proposer/contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the City may provide a response period shorter than five days.

2. The bidder/proposer/contractor's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include the following examples:

- a) The listed DBE subcontractor fails or refuses to execute a written contract;
- b) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- c) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- d) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- e) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- f) The City has determined that the listed DBE subcontractor is not responsible;
- g) The listed DBE subcontractor voluntarily withdraws from the project and provides to the City written notice of its withdrawal;
- h) The listed DBE is ineligible to receive DBE credit for the type of work required;
- i) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- j) Other documented good cause that the City may determine compels the termination of the DBE subcontractor.

The bidder/proposer/contractor's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: A replacement firm has been recruited to perform the same work under terms more advantageous to the prime contractor; issues about performance by the committed DBE were disputed (unless every reasonable effort has already been made to have the issues resolved or mediated satisfactorily); a DBE has requested reasonable price escalation which may be justified due to unforeseen circumstances; or the bidder/proposer seeks to terminate a DBE it relied upon to obtain the contract so that the bidder/proposer can self-perform the work for which the DBE subcontractor was engaged.

3. The bidder/proposer/contractor's notification should include the name, address and principal official of any proposed substitute DBE and the dollar value and scope of work of the proposed subcontract. Attached

should be all the same DBE affidavits, documents, and Letter of Intent which are required of bidders, as enumerated in Section, Procedure to Determine Bid Compliance.

4. The City will evaluate the submitted documentation, and respond within 15 working days to the request for approval of a substitution. The response may be in the form of a request for more information, or a request for an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the City will instead respond as soon as practicable.

4. If termination of a DBE subcontractor is approved, or a DBE subcontractor fails to complete its work on the contract for any reason, bidder/proposer/contractor must make Good Faith Efforts to replace that subcontractor. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract. The good faith efforts shall be documented by the bidder/proposer. If the City requests documentation, the bidder/proposer/contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the bidder/proposer/ contractor. The City shall provide a written determination to the bidder/proposer/contractor stating whether or not good faith efforts have been demonstrated.

5. Actual substitution of a replacement DBE to fulfill the Contract DBE Participation Goal may not be made before City approval is given of the acceptability of the substitute DBE. A subcontract with the substitute DBE subcontractor must be executed within five working days following the City's approval, and a copy of the DBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.

B. The City will not approve extra payment for escalated costs incurred by the bidder/proposer/contractor when a substitution of subcontractors becomes necessary for the bidder/proposer/contractor to comply with the Contract DBE Participation Goal.

C. The Chief Procurement Officer will make the determination of whether the bidder/proposer/contractor has exercised Good Faith Efforts.

1.11. Non-Compliance

A. Each of the following constitutes a material breach of this contract and entitles the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract, at law or in equity:

1. failure to make good faith efforts to satisfy the Contract DBE Participation Goal proposed by the bidder/proposer and accepted by the City; and

2. the contractor, a subcontractor or supplier is disqualified as a DBE, where the status was a factor in the contract award and was misrepresented by the contractor.

If the contractor is determined by the City not to have been involved in any misrepresentation of the status of a disqualified subcontractor or supplier, the contractor must discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified DBE as its replacement. Furthermore, contractor's continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. The City may withhold payments due to the contractor until corrective action is taken.

B. The contractor's failure to comply with the Contract DBE Participation Goal proposed by the bidder/proposer and accepted by the City, or failure to comply with the provisions of Section IX, DBE Substitutions, will entitle the affected DBEs to recover from the contractor damages suffered by these DBEs as a result of such under- or non-utilization, but this provision will not apply to the extent the under- or non-utilization occurs pursuant to Good Faith Efforts approved by the City. *See Section 1.12, "Arbitration."*

For contracts funded in whole, or in part, by Federal Highway Administration, Federal Transit Administration, Illinois Department of Transportation: When the contract requirements are completed, in the event that the City has determined that the bidder/proposer/contractor failed to comply with the Contract DBE Participation Goal proposed by the bidder/proposer/contractor and accepted by the City, the City will thereby be damaged in the failure to provide the benefit of participation to DBEs to the degree set forth in the Special Conditions. Therefore, in such case of non-compliance, the City will deduct as liquidated damages cumulative amounts computed as follows:

For each one percent (or fraction thereof) of shortfall toward the Contract DBE Participation Goal, one percent of the base bid for this contract shall be surrendered by the bidder/proposer to the City of Chicago in payment as liquidated damages.

1.12. Arbitration (FAA Funded Contracts)

A. The contractor hereby agrees that any disputes between the contractor and any affected DBE regarding damages as a result of contractor's under- or non-utilization of the DBE on any contract funded, in whole or in part, by the Federal Aviation Administration may, at the sole discretion of the DBE, be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by a prevailing DBE in accordance with applicable City regulations. This provision is intended for the benefit of any DBEs affected by under- or non-utilization and grants them specific third party beneficiary rights. In cases where deemed appropriate by the Contract Compliance Administrator, notification of a dispute by the affected DBE or prime contractor may lead to the withholding of final contract payouts until the City receives a copy of the final arbitration decision. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including those contained in a subcontract, suborder or communicated orally between a contractor and a DBE.

B. If requested by the DBE, the DBE has the right to arbitrate. A DBE desiring to arbitrate must contact the contractor in writing to initiate the arbitration process. Except as otherwise agreed to in writing by the affected parties, subject to the limitation contained in the last sentence of the previous paragraph, within 10 days of the contractor receiving notification of the intent to arbitrate from the DBE the above-described disputes must be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 1840, Chicago, Illinois 60601-7601. [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations must be initiated by the DBE filing a demand for arbitration with the AAA; must be conducted by the AAA; and held in Chicago, Illinois.

C. All fees of the arbitrator are the initial responsibility of the DBE; the arbitrator, however, is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing DBE.

D. The DBE must send the City a copy of the "Demand for Arbitration" within 10 days after it is filed with the AAA. The DBE also must send the City a copy of the decision of the arbitrator within 10 days of receiving the decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

1.13. Prime Contractor Assistance

Prime contractors should themselves assist DBEs in overcoming barriers to program participation. The following instruments of assistance, for example, should be used as applicable:

- Developing solicitations of sub-contract bids so as to increase potential DBE participation. This can take the form of breaking down large subcontracts into smaller ones, and of issuing notice of solicitations in a timely manner.
- Providing technical assistance and guidance in the bidding, estimating and scheduling processes.
- Considering purchasing supplies and/or leasing the required equipment for a job, then subcontracting only for the expertise required to perform the work.
- Providing accelerated payments or establishing pro-rated payment and delivery schedules so as to minimize cash flow problems faced by small firms.
- Providing, waiving or reducing subcontractor bonding requirements; allowing stage bonding (bonding carried over from one project stage to the next).
- Providing a pre-bid conference for potential sub-contractors.

In addition to the employment of DBEs, the bidder/proposer should consider the utilization of DBEs in fields indirectly related to the contract, such as banking, office equipment sales, vehicles sales, mechanical repair, legal and accounting services, building security, graphics and advertising, etc.

1.14. Record Keeping

The Contractor shall maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period that is the longer of five years or as required by relevant retention schedules after final acceptance of the work. Full access to these records shall be granted to the City of Chicago, Federal or State authorities in this project, the U. S. Department of Justice, or any duly authorized representatives thereof.

1.15. DBE Financial Institutions

As of January 2014 Illinois has only one certified DBE financial institution, Seaway National Bank.

Other Minority and/or Female Owned Institutions:

- Banco Popular
- First Commercial Bank
- Illinois Federal Savings Bank

1.16. Assistance Agencies

Small business guaranteed loans, surety bond guarantees; 8(a) certification:

U. S. Small Business Administration
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert Conner
(312)353-4528

S.B.A. Bond Guarantee Program/Surety Bonds
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
(312)353-7331

S.B.A. Procurement Assistance
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert P. Murphy, Assistant Regional Administrator
(312)744-1895

City of Chicago Web site:

www.cityofchicago.org/purchasing

Information on DBE availability in the manufacturing, sales or supplies, and related fields (direct assistance from 42 regional affiliates located throughout the U.S.):

National Minority Supplier
Development Council, Inc.
1040 Avenue of the Americas – 2nd Floor
New York, New York 10018
Attention: Harriet R. Michel
(212)944-2430

Chicago Minority Business Development Council
11 South LaSalle Street – Suite 850
Chicago, Illinois 60603
Attention: Tracey Smith
(312)263-0105

1.17. Equal Employment Opportunity

Compliance with DBE requirements will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as specified elsewhere in this contract and as they relate to prime contractor and subcontractor obligations.

Attachment A –Assist Agency List



CITY OF CHICAGO ASSIST AGENCY LIST

Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

American Brotherhood of Contractors 935 West 175 th Street Homewood, Illinois 60430 Phone: (773) 491-5640 Email: arpa@constructive-business.com	Chatham Business Association Small Business Development, Inc. 8441 S. Cottage Grove Avenue Chicago, IL 60619 Phone: (773)994-5006 Fax: (773)994-9871 Email: melkelcba@sbcglobal.net Web: www.cbaworks.org
Asian American Business Expo 207 East Ohio St. Suite 218 Chicago, IL 60611 Phone: 312-233-2810 Fax: 312-268-6388 Email: Janny@AsianAmericanBusinessExpo.org	Chicago Area Gay & Lesbian Chamber of Commerce 3656 N. Halsted Chicago, IL 60613 Phone: (773) 303-0167 Fax: (773) 303-0168 Email: info@glchamber.org Web: www.glchamber.org
Asian American Institute 4753 N. Broadway St. Suite 904 Chicago, IL 60640 Phone: (773) 271-0899 Fax: (773) 271-1982 Email: kfernica@aaichicago.org Web: www.aaichicago.org	Chicago Minority Supplier Development Council, Inc. 105 W. Adams, Suite 2300 Chicago, IL 60603-6233 Phone: (312) 755-8880 Fax: (312) 755-8890 Email: pbarreda@chicagomsdc.org Web: www.chicagomsdc.org
Association of Asian Construction Enterprises 333 N. Ogden Avenue Chicago, IL 60607 Phone: (847) 525-9693 Email: nakmancorp@aol.com	Chicago Urban League 4510 S. Michigan Ave. Chicago, IL 60653 Phone: (773) 285-5800 Fax: (773) 285-7772 Email: president@thechicagourbanleague.org Web: www.cul-chicago.org
Black Contractors United 400 W. 76 th Street, Suite 200 Chicago, IL 60620 Phone: (773) 483-4000 Fax: (773) 483-4150 Email: bcunewera@att.net Web: www.blackcontractorsunited.com	Chicago Women in Trades (CWIT) 4425 S. Western Blvd. Chicago, IL 60609-3032 Phone: (773) 376-1450 Fax: (312) 942-0802 Email: cwitinfo@cwit2.org Web: www.chicagowomenintrades.org
Cosmopolitan Chamber of Commerce 203 N. Wabash, Suite 518 Chicago, IL 60601 Phone: (312) 499-0611 Fax: (312) 332-2688 Email: ccarey@cosmococ.org Web: www.cosmochamber.org	Coalition for United Community Labor Force 1253 W. 63 rd Street Chicago, IL 60636 Phone: (312) 243-5149 Email: johnrev.hatchett@comcast.net
Eighteenth Street Development Corporation 1843 South Carpenter Chicago, Illinois 60608 Phone: (312) 733-2287 Fax: (773)-353-1683 asoto@eighteenthstreet.org www.eighteenthstreet.org	

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City of Chicago Department of Procurement Services ~ Assist Agencies (cont'd)

<p>Federation of Women Contractors 5650 S. Archer Avenue Chicago, IL 60638 Phone: (312) 360-1122 Fax: (312) 360-0239 Email: fwcchicago@aol.com Web: www.fwcchicago.com</p> <p>Hispanic American Construction Industry Association (HACIA) 650 West Lake Street Chicago, IL 60661 Phone: (312) 666-5910 Fax: (312) 666-5692 Email: info@haciaworks.org Web: www.haciaworks.org</p> <p>Illinois Hispanic Chamber of Commerce 855 W. Adams, Suite 100 Chicago, IL 60607 Phone: (312) 425-9500 Fax: (312) 425-9510 Email: oduque@ihccbusiness.net Web: www.ihccbusiness.net</p> <p>Latin American Chamber of Commerce 3512 West Fullerton Avenue Chicago, IL 60647 Phone: (773) 252-5211 Fax: (773) 252-7065 Email: d.lorenzopadron@latinamericanchamberofcommerce.com Web: www.latinamericanchamberofcommerce.com</p> <p>National Organization of Minority Engineers 33 West Monroe Suite 1540 Chicago, Illinois 60603 Phone: (312) 425-9560 Fax: (312) 425-9564 Email: shandy@infrastructure-eng.com Web: www.nomeonline.org</p> <p>National Association of Women Business Owners Chicago Chapter 230 E. Ohio, Suite 400 Chicago, IL 60611 Phone: (312) 224-2605 Fax: (312) 6448557 Email: info@nawbochicago.org Web: www.nawbochicago.org</p>	<p>Rainbow/PUSH Coalition International Trade Bureau 930 E. 50th Street Chicago, IL 60615 Phone: (773) 256-2781 Fax: (773) 373-4104 Email: bevans@rainbowpush.org Web: www.rainbowpush.org</p> <p>South Shore Chamber, Incorporated Black United Funds Bldg. 1750 E. 71st Street Chicago, IL 60649-2000 Phone: (773) 955-9508 Email: ssshorechamber@sbcglobal.net Web: www.southshorechamberinc.org</p> <p>Suburban Minority Contractors Association 1250 Grove Ave. Suite 200 Barrington, IL 60010 Phone: (847) 852-5010 Fax: (847) 382-1787 Email: aprilcobra@hotmail.com Web: www.suburbanblackcontractors.org</p> <p>Women Construction Owners & Executives (WCOE) Chicago Caucus 308 Circle Avenue Forest Park, IL 60130 Phone: (708) 366-1250 Fax: (708) 366-5418 Email: mkm@mkmserices.com Web: www.wcoeusa.org</p> <p>Women's Business Development Center 8 South Michigan Ave., Suite 400 Chicago, IL 60603 Phone: (312) 853-3477 Fax: (312) 853-0145 Email: fcurry@wbdc.org Web: www.wbdc.org</p>
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Attachment B - Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of DBE Goals

On Bidder/Proposer's Letterhead – SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY

RETURN RECEIPT REQUESTED

(Date)

Specification No.: {Specification Number}
Project Description: {PROJECT DESCRIPTION}

(Assist Agency Name and Address – **SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY**)

Dear _____ :

(Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due _____ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/ Minority/Women Business Enterprise contract goal. **Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted.** If you are aware of such a firm, please contact

Name of Company Representative at Address/Phone

within (10) ten business days of receipt of this letter.

Under the City of Chicago's MBE/WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within ten (10) working days of your receipt of this letter to:

Monica Jimenez, Deputy Procurement Officer
Department of Procurement Services
City of Chicago
121 North La Salle Street, Room 806
Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at _____.

Sincerely,

Schedule B – Affidavit of Joint Venture

**SCHEDULE B: AFFIDAVIT OF DBE/NON-DBE JOINT VENTURE
(FTA, FHWA and FAA Funded Contracts)**

Note: If all joint venturers are DBEs, a written joint venture agreement between the DBE venturers may be submitted in lieu of this form. In all proposed joint ventures, each DBE venturer must submit a copy of its current Letter of Certification.

ALL INFORMATION REQUESTED BY THIS SCHEDULE MUST BE ANSWERED IN THE SPACES PROVIDED. DO NOT REFER TO YOUR JOINT VENTURE AGREEMENT EXCEPT TO EXPAND ON ANSWERS PROVIDED ON THIS FORM. IF ADDITIONAL SPACE IS REQUIRED, ADDITIONAL SHEETS MAY BE ATTACHED.

I. Name of joint venture: _____
Address of joint venture: _____

Phone number of joint venture: _____

II. Identify each non-DBE venturer(s):

Name of Firm: _____
Address: _____

Phone: _____
Contact person for matters concerning DBE compliance: _____

III. Identify each DBE venturer(s): _____

Name of Firm _____
Address: _____

Phone: _____
Contact person for matters concerning DBE compliance: _____

IV. Describe the role(s) of the DBE venturer(s) in the joint venture:

V. Attach a copy of the joint venture agreement. In order to demonstrate the DBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the DBE's own forces; (3) work items to be performed under the supervision of the DBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the DBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.

A. What are the percentage(s) of DBE ownership of the joint venture?
DBE ownership percentage(s) _____
Non-DBE ownership percentage(s) _____

Schedule B

B. Specify DBE percentages for each of the following (provide narrative descriptions and other details as applicable):

1. Profit and loss sharing: _____
2. Capital contributions:
 - (a) Dollar amounts of initial contribution: _____
 - (b) Dollar amounts of anticipated on-going contributions: _____
3. Contributions of equipment (specify types and quantities of equipment to be provided by each venturer):

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control: _____

5. Provide copies of all written agreements between venturers concerning this project.
6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

VII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint venture check signing:

B. Authority to enter contracts on behalf of the joint venture:

C. Signing, co-signing and/or collateralizing loans:

D. Acquisition of lines of credit:

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E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements:

G. Management of contract performance. (Identify by name and firm only):

1. Supervision of field operations: _____
2. Major purchases: _____
3. Estimating: _____
4. Engineering: _____

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the "managing partner," if any, and describe the means and measure of their compensation:

C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-DBE firm, the DBE firm, or the joint venture.

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Note: If any personnel proposed for this project will be employees of the joint venture:

A. Are any proposed joint venture employees currently employed by either venturer?

Currently employed by non-DBE (number) _____

Currently employed by DBE _____

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:

C. Which venturer will be responsible for the preparation of joint venture payrolls:

XI. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

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Note: If there are any changes in the information submitted after filing this Schedule B and before the completion of the joint venture's work on the project, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of DBE Partner Firm

Name of Non-DBE Partner Firm

Signature of Affiant

Signature of Affiant

Name and Title of Affiant

Name and Title of Affiant

Date

Date

On this ____ day of _____, 20 ___, the above-signed officers

_____,
(names of affiants)

personally appeared and, known to me to be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Signature of Notary Public

My Commission Expire: _____

(SEAL)

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Schedule C-3 – DBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant

SCHEDULE C-3

**DBE Letter of Intent to Perform as a
Subcontractor, Supplier, or Consultant**

**FOR
TASK ORDER
CONTRACTS ONLY**

Contract PO No.: _____

Task Order Project

Description: _____

From: _____
(Name of DBE Firm)

To: _____ and the City of
Chicago.
(Name of Prime Contractor)

The undersigned is prepared to perform the following services in connection with the above named Task Order. If more space is required to fully describe the DBE proposed scope of services and/or payment schedule, including a description of the commercially useful function being performed. Attach additional sheets as necessary:

The above described performance is offered for the following price and described terms of payment:

SUB-SUBCONTRACTING LEVELS

A zero (0) must be shown in each blank if the DBE will not be subcontracting any of the services listed or attached to this schedule.

_____ % of the dollar value of the DBE subcontract that will be subcontracted to non-DBE contractors.

_____ % of the dollar value of the DBE subcontract that will be subcontracted to DBE contractors.

NOTICE: If any of the DBE scope of services will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the services that will be subcontracted.

The undersigned will enter into a formal written agreement for the above scope of services with you as a Prime Contractor, conditioned upon your receipt of an approved Task Order from the City of Chicago, within three (3) business days of your receipt of an approved Task Order from the City of Chicago.

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

(Signature of President/Owner/CEO or Authorized Agent of DBE)

(Date)

(Name/Title-Please Print)

(Email & Phone Number)

Schedule D-3 – Affidavit of Prime Contractor Task Order Services Contracts DBE Compliance Plan



SCHEDULE D-3
Task Order Services Contracts
Compliance Plan for DBE Commitment
Affidavit of Prime Contractor

**FOR
TASK ORDER SERVICES
CONTRACTS ONLY**

**MUST BE SUBMITTED WITH THE BID. FAILURE TO SUBMIT THE SCHEDULE D-3
WILL CAUSE THE BID TO BE REJECTED. DUPLICATE AS NEEDED.**

Contract PO No.: _____

Task Order Project

Description: _____

I HEREBY DECLARE AND AFFIRM that I am the _____ and a duly
authorized representative of _____
(Title of Affiant)

(Name of Prime Consultant/Contractor)

and that I have personally reviewed the material and facts set forth in the Schedule C-3 regarding
Disadvantaged Business Enterprise (DBE) to perform as a subcontractor/sub-consultant/ or supplier. All DBE
firms included in this plan have been certified as such by the City of Chicago or the Illinois Unified Certification
Program (current letter of certification attached).

I. Complete this section for each DBE participating on this Task Order:

1. Name of DBE Firm: _____

Address: _____

Contact Person/Title: _____

Phone Number: _____

Dollar Value of Participation: \$ _____

Percentage of Participation: % _____

If indirect participation is being used, describe in detail the services that will be performed and provide
detailed project information (ie., project name, description, location, type of service and/or supplies that
are being purchased. Copies of invoices, bill of sale, and cancelled checks must be submitted to the
Department of Procurement Services upon project completion.

2. Name of DBE Firm: _____

Address: _____

Contact Person/Title: _____

Phone Number: _____

Dollar Value of Participation: \$ _____

Percentage of Participation: % _____

If indirect participation is being used, describe in detail the services that will be performed and provide detailed project information (ie., project name, description, location, type of service and/or supplies that are being purchased. Copies of invoices, bill of sale, and cancelled checks must be submitted to the Department of Procurement Services upon project completion.

3. Name of DBE Firm: _____

Address: _____

Contact Person/Title: _____

Phone Number: _____

Dollar Value of Participation: \$ _____

Percentage of Participation: % _____

If indirect participation is being used, describe in detail the services that will be performed and provide detailed project information (ie., project name, description, location, type of service and/or supplies that are being purchased. Copies of invoices, bill of sale, and cancelled checks must be submitted to the Department of Procurement Services upon project completion.

4. Name of DBE Firm: _____

Address: _____

Contact Person/Title: _____

Phone Number: _____

Dollar Value of Participation: \$ _____

Percentage of Participation: % _____

If indirect participation is being used, describe in detail the services that will be performed and provide detailed project information (ie., project name, description, location, type of service and/or supplies that

are being purchased. Copies of invoices, bill of sale, and cancelled checks must be submitted to the Department of Procurement Services upon project completion.

5. Name of DBE Firm: _____

Address: _____

Contact Person/Title: _____

Phone Number: _____

Dollar Value of Participation: \$ _____

Percentage of Participation: % _____

If indirect participation is being used, describe in detail the services that will be performed and provide detailed project information (ie., project name, description, location, type of service and/or supplies that are being purchased. Copies of invoices, bill of sale, and cancelled checks must be submitted to the Department of Procurement Services upon project completion.

6. Attach Additional Sheets as Needed

II. **Summary of Direct DBE Proposal**

1. DBE Direct Participation

DBE Firm Name	Dollar Value of Participation (\$)	Percentage of Participation (%)
Total Direct DBE Participation		

III. **Summary of Indirect DBE Proposal**

1. DBE Indirect Participation

DBE Firm Name	Dollar Value of Participation (\$)	Percentage of Participation (%)
Total Indirect DBE Participation		

The Prime Contractor designates the following person as its DBE Liaison Officer:

(Name-Please Print or Type)

(Phone)

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, THAT NO MATERIAL FACTS HAVE BEEN OMITTED, AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.

(Name of Prime Contractor – Print or Type)

State

of: _____

County

of: _____

(Signature)

(Name/Title of Affiant – Print or Type)

(Date)

On this _____ day of _____, 20____, the above signed officer

(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

(Notary Public Signature)

SEAL:

Commission Expires: _____

EXHIBIT 5: INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE

INSURANCE REQUIREMENTS
Chicago Department of Aviation
Architectural and Engineering Services
For the Residential Sound Insulation Program
(Design & Construction Phases)

A. Insurance Required

Consultant must provide and maintain at Consultant's own expense, during the term of the Agreement and during the time period following expiration if Consultant is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

1) Workers Compensation and Employers Liability (Primary and Umbrella)

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services, or operations under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Consultant may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not limited to, the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Consultant's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Consultant's acts or omissions, whether such liability is attributable to the Consultant or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Consultant's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Consultant may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) **Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Consultant with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an additional insureds on a primary, non-contributory basis.

Consultant may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) **Excess/Umbrella**

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$4,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Consultant may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) **Professional Liability**

When any, architects, engineers, or any other professional consultants perform work, services, or operations in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained or cause to be maintained, with limits of not less than \$5,000,000 each claim. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6) **Valuable Papers**

When any plans, designs, drawings, specifications and media, data, records, reports and other documents are produced or used under this Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

7) **Property**

Consultant is responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned, rented, or used by Consultant.

B. Additional Requirements

Evidence of Insurance. Consultant must furnish the City, Chicago Department of Aviation, 10510 W. Zemke Rd, Chicago, IL 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this

Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Consultant must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Consultant, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Consultant must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Consultant for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Consultant to comply with required coverage and terms and conditions outlined herein will not limit Consultant's liability or responsibility nor does it relieve Consultant of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Consultant must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Consultant.

Waiver of Subrogation. Consultant hereby waives its rights and its insurer(s)' rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance herein for any loss arising from or relating to this Agreement. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Consultant's insurer(s).

Consultants Insurance Primary. All insurance required of Consultant under this Agreement must be endorsed to state that Consultant's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Consultant's Liabilities. The coverages and limits furnished by Consultant in no way limit the Consultant's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Consultant under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Consultant maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and must be entitled the higher limits and/or broader coverage maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage must be available to the City.

Joint Venture or Limited Liability Company. If Consultant is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Consultant. If Consultant desires additional coverages, the Consultant will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Consultant must name the Subcontractor(s) as a named insured(s) under Consultant's insurance or Consultant will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Contractor but be no less than \$1,000,000 per occurrence for Commercial General Liability and Auto Liability and not less than \$1,000,000 for Professional Liability. Consultant must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Consultant is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Consultant is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Consultant must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Consultant's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.