

**BOOK 1
TERMS AND CONDITIONS FOR CONSTRUCTION**

**CITY OF CHICAGO
DEPARTMENT OF TRANSPORTATION**

**PROJECT TITLE: LAKE SHORE DRIVE OVER LAWRENCE AVENUE BRIDGE
REHABILITATION**

CDOT PROJECT NO.: E-5-510

SPECIFICATION NO.: 304888

F.A. PROJECT NO.: HPP-1637(003)

STATE JOB NO.: C-88-023-16

SECTION NO.: 05-E5006-00-BR



**RAHM EMANUEL
MAYOR**

Issued by the
DEPARTMENT OF PROCUREMENT SERVICES

JAMIE L. RHEE
CHIEF PROCUREMENT OFFICER

Federal Funding - FHWA

May 2017
(The City may from time to time revise these terms and conditions)

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I. GENERAL PROVISIONS

A. Acronyms

"ACI" - American Concrete Institute	"CTA" - Chicago Transit Authority
"AED" - Associated Equipment Distributors	"EDS" - See Section XXII.R.
"AISC" - American Institute of Steel Construction.	"IDOT" - Illinois Department of Transportation
"ANSI" - American National Standards Institute.	"NFPA" - National Fire Protection Association
"ASME" - American Society of Mechanical Engineers.	"OSHA" - U.S. Occupational Safety and Health Administration
"ASTM" - American Society for Testing and Materials	"SSRBC" - IDOT Standard Specifications for Road and Bridge Construction issued by IDOT, as amended from time to time. See: http://www.idot.illinois.gov/doing-business/procurements/engineering-architectural-professional-services/Consultants-Resources/index
"CPM" - Critical Path Method (See XI, Schedule)	
"CPO" - Chief Procurement Officer	

B. Definitions

1. "Architect/Engineer" means the person designated by the Commissioner to provide the Contract drawings and Detailed Specifications for the Work you are to perform.
2. "Business Days" means Monday through Friday, unless an officially designated City holiday falls on one of those days. By contrast, see "Day" and "Working Day."
3. "Chief Procurement Officer" means the Chief Procurement Officer for the City of Chicago, and any representative duly authorized in writing to act on his/her behalf.
4. "City" means the City of Chicago, a municipal corporation and home rule unit of government existing under the Constitution of the State of Illinois.
5. "Commissioner" means the head of the Department and any designee duly authorized in writing to act on his/her behalf. See also "Department."
6. "Comptroller" means City Comptroller or his designated representative.
7. "Consultant(s)" refers to the person, firm or corporation awarded a contract by the City to provide professional architectural or engineering design services or construction supervision for the Project.
8. "Contract" means this Contract, including your bid proposal (as accepted by the City), the City's bid specification, which includes Books 1, 2, and 3, plans and drawings, addenda, all exhibits and schedules that are attached to it and documents incorporated in it by reference; fully executed performance and payments bond(s); and all

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amendments, modifications, or revisions made from time to time in accordance with its terms.

9. "Contract Completion Date" is the date, determined by the Commissioner, on which the Project is to reach Substantial Completion. The Contract Completion Date will be determined based on the duration for the Project set by the Contract as adjusted by any Contract modifications that extend or reduce the duration of the Project.
10. "Contract Modification" means a written modification of the terms and conditions of this Contract, signed by you, the Chief Procurement Officer, the Mayor and the Comptroller.
11. "Contractor" or "you" means the person who is awarded the Contract.
12. "Contract Price" is defined in Section XIII.A.
13. "Contract Time" is the duration of the Work from when the Work is required to begin until the scheduled date for Substantial Completion, including approved time extensions. See "Substantial Completion."
14. "Corporation Counsel" means the head of the City's Department of Law and any Assistant Corporation Counsel duly authorized to act on the Corporation Counsel's behalf.
15. "Day" means calendar day.
16. "Daytime Work" means work performed between the hours of 6:00 a.m. to 6:00 p.m.
17. "Department" means the City Department identified on the cover of this Contract.
18. "Detailed Specifications" means the written requirements for materials and equipment to be used in the Work, including any plans or drawings, and standards of performance for the Work, which are set forth in Book 3 or incorporated by reference.
19. "Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
20. "Equipment" means all machinery and equipment, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper and acceptable completion of the Work.
21. "Field Order" means the written order to you, signed by the Commissioner, unilaterally directing changes in the Work or the Contract Time, or directing you to take corrective action and to adhere to Contract.
22. "Final Completion and Acceptance of the Work " means the last date on which all of the following events have occurred: (i) the Commissioner has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract; (ii) final inspections have been completed and operations systems and equipment testing have been completed; (iii) final occupancy certifications have been issued; (iv) all deliverables have been provided to the Commissioner; and (v) all contractual requirements for final payment have been completed.
23. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy

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Act (42 U.S.C. Sec. 2014, *et seq.*), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136, *et seq.*) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," or "toxic substance" (or comparable term) in any Environmental Law.

24. "Include" (in all of its forms) means "include without limitation" unless the context clearly indicates otherwise.
25. "Management Consultant" or "Program Manager" means the organization or entity, if any, that the City has retained to oversee the planning, design, and construction of the Project.
26. "Municipal Code" means the Municipal Code of Chicago.
27. "Night Work" means work performed between the hours of 6:00 p.m. and 6:00 a.m. unless otherwise defined in the plans.
28. "Notice to Bidders" means the Advertisement for Bids, the official notice inviting bids for the proposed Work to be done under this Contract.
29. "Notice to Proceed" means written authorization from the Commissioner for you to commence the Work on a specified date.
30. "Product Data" are illustrations, standard schedules, performance charts, instructions, descriptive literature, catalogs and brochures, performance and test data, test certifications, diagrams and other information furnished by you to illustrate a material, product or system for some portion of the Work.
31. "Project" means, collectively, the improvements you are to construct in accordance with the Contract.
32. "Provide" means furnish and install, unless otherwise specified in this Contract.
33. "Punch List" or "Punch List work" means minor adjustments, repairs or deficiencies in the Work, as determined by the Commissioner in his or her sole discretion.
34. "Record Documents" are all documents pertaining to the completed Work and the Project that the Contract requires you to provide to the City, including Record Drawings, Record Shop Drawings, product data, instructions, parts list, certified payrolls and operations and maintenance manuals.
35. "Record Drawings" means drawings reflecting the final built Project configuration, including approved modifications.
36. "Samples" mean physical examples that illustrate materials, equipment or workmanship. Samples include materials, fabricated items, equipment, devices, appliances, or parts of them, as called for in the Detailed Specifications and any other Samples that may be required by the Commissioner to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials proposed by you conform to the required characteristics.
37. "Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the Work by you or any Subcontractor, manufacturer, supplier or distributor

to illustrate some portion of the Work. Shop Drawings include: fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and systems and methods of construction that may be required to show that the materials, equipment or system conform to the Contract requirements. Shop drawings must establish the actual detail of all manufactured and fabricated items and indicate the proper relation to the adjoining Work.

38. "Special Wastes" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 of 35 Illinois Administrative Code, Subtitle G, Ch. 1.
39. "Standard Specifications" means the SSRBC.
40. "State" means the State of Illinois.
41. "Subcontractor" means any person or entity with whom you contract to provide any part of the Work, and all subcontractors of any tier, including suppliers and material persons, whether or not in privity with you.
42. "Submittal" means Schedule, Shop Drawings, Product Data or Samples and other items that the Contract may require you to submit to the Commissioner.
43. "Substantial Completion Date" is the date upon which you have met the requirements for Substantial Completion in the opinion of the Commissioner.
44. "Substantial Completion of the Project" or "Substantial Completion" means that, in the opinion of the Commissioner, you have completed all Work in accordance with the Contract, except for Punch List Work, and the City is able to occupy and use the Project for the purpose intended.
45. "Work" means all labor, materials, equipment, deliverables, and other incidentals to be provided by you under this Contract that are necessary or convenient to the successful completion of this Project and that are required by, incidental or collateral to the Contract.
46. "Working Day" has the same meaning as in the SSRBC.
47. "You" means "Contractor." See above.

C. Usage and Contract Interpretation

1. Unless a contrary meaning is specifically noted elsewhere, words such as, "as required," "as directed," "as permitted," and similar words mean that requirements, directions of, and permission of the Commissioner are intended. The words "approved," "acceptable," "satisfactory," or words of like import, mean "approved by," "acceptable to," or "satisfactory to" the Commissioner. The words "necessary," "proper," or words of like import as used regarding the extent, conduct or character of the Work specified means that Work must be conducted in a manner, to the extent, or be of character that is "necessary" or "proper" in the opinion of the Commissioner. The Commissioner's judgment in these matters is final and you are not permitted to contest it.

2. Where the imperative form of an address is used, such as “perform the excavating,” “provide equipment required,” “remove obstructions encountered,” “furnish and install reinforcing steel bars,” etc., that address is directed to you .
3. Any headings in this Contract are for convenience of reference only and do not define or limit its terms or provisions. All article and section references, unless otherwise expressly indicated, are to sections of this Contract. Words importing persons include firms, associations, partnerships, trusts, corporations, joint ventures and other legal entities, including public bodies, as well as natural persons. Words of any gender include correlative words of other genders. Words importing the singular number include the plural and vice versa, unless the context otherwise indicates. All references to any exhibit or document include the latest version and all supplements and/or amendments to any such exhibits or documents. All references to any person or entity include any person or entity succeeding to the rights, duties, and obligations of those persons or entities in accordance with the terms and conditions of this Contract.
4. Whenever reference to a law is contained in this Contract, the reference includes any amendments to the law.

D. Severability

If any provision of this Contract is inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions because it conflicts with any other provision of this Contract, or of any constitution, statute, ordinance, rule of law, or public policy, or for any other reason, those circumstances will not render the provision in question inoperative or unenforceable in any other case or circumstance, or render any other provision or provisions of this Contract invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any phrases, sentences, clauses, or sections contained in this Contract will not affect the remaining portions of this Contract or any part of it.

E. Estimates of Quantities

If an estimate of quantities of Work is listed in the Bid Schedule of Prices, Contractor understands that:

1. the estimate is approximate only;
2. the City does not expressly or by implication represent or warrant that the actual quantities involved will correspond to the estimate;
3. payment to you will be made only for the actual quantities furnished and installed in accordance with the terms of this Contract; and
4. the Chief Procurement Officer and the Commissioner reserve the right to jointly order, in writing, to increase, decrease or delete quantities of Work pursuant to all terms and conditions of the Contract.

F. Order of Precedence of Component Contract Parts

The order of precedence of the component contract parts is as follows:

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1. Terms and Conditions;
2. Addenda if any;
3. Plans or City Drawings;
4. Detailed Specifications;
5. Standard Specifications of the City, State or Federal Government, if any;
6. Advertisement for Bids (copy of advertisement to be attached to back of cover);
7. Requirements for Bidding and Instructions to Bidders; and
8. Performance Bond, if required.

The foregoing order of precedence governs the interpretation of the Contract in all cases of conflict or inconsistency in it.

G. Entire Agreement

The Contract constitutes the entire agreement between the parties with respect to its subject matter, and no other oral or written understandings, representations, inducements, consideration, promises, or interpretations are implied or impressed upon this Contract that are not expressly addressed in it.

II. PROJECT ORGANIZATION

A. The Commissioner

For the purposes of this Contract, the Commissioner, or any successor office to the Commissioner, will represent the City in all matters relating to the performance of Contractor's Work under this Contract and will constitute the point of receipt for all deliverables required under this Contract, unless expressly specified otherwise in this Contract. The Commissioner will decide all questions that arise with regard to the administration of the Contract such as to the quality and acceptability of materials furnished, the Work performed and rate of progress of the Work. The Commissioner will determine the amount and quality of Work performed and materials furnished and their estimates. The Commissioner's estimate will be a condition precedent to Contractor's right to receive money due under the Contract, but then only if the modifications or amendments to the Contract are approved in accordance with Article XIV, "Changes in the Work."

B. The Chief Procurement Officer

The approval of the Chief Procurement Officer is required to enter this Contract and to modify it.

C. Contractor

The Work is under your charge and care until Final Completion and Acceptance of the Work, unless otherwise specified elsewhere in the Contract.

III. CONTRACTOR'S OBLIGATIONS

A. Contractor

1. Except as may be expressly provided otherwise in the Contract, Contractor is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work. The intent of the Detailed Specifications is to describe the completed Work that Contractor must provide to fulfill the requirements of the Contract. The Detailed Specifications are not intended to cover every detail of materials, parts, or activities necessary to complete the Work. Contractor must perform all activities that may be required or necessary to complete the Work in accordance with the Contract. For the Contract Price, Contractor must construct, furnish and install all materials, parts and labor necessary to complete the entire Work, whether or not the Contract particularly specifies or shows the details of Work.
2. The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. Contractor is responsible for all division of work. However, wherever any provision of any section of the specifications conflicts with any agreements or regulations of any kind at any time in force among members of any trade or craft associations, unions or councils that regulate or distinguish that work is or is not included in the work of any particular trade, Contractor must make all necessary arrangements to reconcile any such conflict without delay, damage, or cost to the City.
3. Before submission of your bid, Contractor must (i) inspect the site of the proposed Work and familiarize itself with all the site conditions that may affect its performance of the Work; and (ii) review the Detailed Specifications, plans and drawings provided with the bid documents, as required in the "Requirements for Bidding and Instructions to Bidders," in Book 2. If at any time before the bid opening Contractor discovers any errors, discrepancies or omissions in the Contract or any discrepancy between the Contract and the physical conditions at the site or in any drawings that may be provided later, Contractor must notify the Chief Procurement Officer immediately, in writing for an interpretation through an Addendum.
4. This written request must be received by the Chief Procurement Officer no later than 10 days before bid opening, or no response will be provided. Contractor will not be allowed to take advantage of its discovery of any such error or omission or discrepancy in the Contract after the award of the Contract. Any Work done after the discovery, unless authorized by the Chief Procurement Officer, will be done at Contractor's expense.

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5. Except as otherwise expressly provided in the Contract, the Contract Price includes all costs and expenses for which Contractor will be compensated in connection with the Contract, including:
 - a. the costs of performing any or all of Contractor's obligations and duties under the Contract;
 - b. the costs of all materials, equipment, supplies, tools, machinery, labor, supervision, management and items of any and all kinds that are or may be necessary and incidental to the full and satisfactory completion of the Work, whether or not specified or indicated in the Contract;
 - c. the costs of permits, insurance, bonds and license;
 - d. the costs associated with any risks Contractor assumes under the Contract;
 - e. the costs associated with all warranties and guarantees;
 - f. the costs of complying with the directives of the Chief Procurement Officer and/or the Commissioner;
 - g. the costs of complying with all laws applicable to the Contract; and
 - h. all overhead and profit.
6. No term of the Contract that further specifically indicates that Contractor must bear the costs of an item or that further specifically indicates that an item will be performed at no additional cost to the City will be construed or interpreted to in any way limit the foregoing.
7. Contractor must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of the Notice to Proceed, Contractor must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work. Contractor must include among its staff such personnel and positions as the Contract may require.
8. If, in the reasonable opinion of the Commissioner, the performance of personnel assigned to the Work is at an unacceptable level, or does not comply with the provisions of Section VIII.A, "Competency of Workers," those personnel must cease to be assigned to this Work and must return to Contractor. Contractor must then furnish to the Commissioner the name of a substitute person or persons in accordance with Section III.A.6. Absence of sufficient qualified personnel for the Work constitutes an event of default.
9. Contractor must supervise and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. Contractor is responsible for providing a finished Project that complies fully with the Contract.
10. Risk of Loss. The Work is under Contractor's charge and care until Final Completion and Acceptance of the Work by the Commissioner, unless otherwise specified in the Contract. Contractor assumes all responsibility for injury or damage to the Work by action of the elements, fire or any other causes whatsoever, including injury or damage

arising from the execution or non-execution of the Work. Contractor must rebuild, repair, restore and make good, at no additional cost to the City, all injuries or damages to any portion of Contractor's Work before Final Completion and Acceptance of the Work.

11. When the City furnishes equipment or materials to Contractor for use or inclusion in the Work, Contractor must safeguard all such equipment and materials as Contractor would equipment and materials that Contractor furnished.
12. The Work will not be considered to be completed and accepted until Contractor receives written notice from the Commissioner confirming the Final Completion and Acceptance of the Work.
13. If Contractor has any questions or concerns with respect to the Detailed Specifications or Contract drawings, Contractor must raise them with the Commissioner.
14. Except as specified below, Contractor must perform with its own organization and forces not less than 50% of the total amount of Work that is performed at the Project site, computed on the basis of cost. Contractor must require each Subcontractor to become familiar with all provisions of the Contract documents that may affect Subcontractor's work.

B. Subcontractors

1. All rights and obligations under this Contract are by and between the City and Contractor. Except as may otherwise be provided in the Contract, there is no privity between Subcontractors and the City. Subcontractors have no rights as third-party beneficiaries under this Contract except as may be provided in Article XXVIII. Contractor must implement such measures as may be necessary to ensure that its Subcontractors are bound by all applicable provisions of the Contract.
 - a. All Subcontractors are subject to the approval of the Chief Procurement Officer. Contractor must not substitute a Subcontractor previously accepted by the Chief Procurement Officer unless the substitution is acceptable to the Chief Procurement Officer. All requests to subcontract must be submitted on a form approved by the Chief Procurement Officer.
 - b. Contractor is responsible in all aspects and at all times for all Subcontractor Work.
2. Except as required under Article XXVIII, Contractor must upon request furnish the Chief Procurement Officer with one copy of each written subcontract and subsequent modifications signed by Contractor and the Subcontractor evidencing the agreement. All subcontracts must be in writing. All subcontracts must require that (i) all Contractor's Subcontractors's Work be performed in strict accordance with this Contract: and (ii) the Subcontractor is bound by and subject to the requirements of this Contract, whether or not a particular provision specifically mentions Subcontractors. Subcontracts may contain different provisions than are provided in this Contract with respect to payments, schedules, and matters not affecting the quality or timely completion of the Work under this Contract, but only if the City's rights are not thereby prejudiced and they are in accordance with any requirements of the funding federal agency, if applicable. Contractor must require each Subcontractor to enter into similar subcontracts with its Subcontractors. Contractor must make available to each Subcontractor, before the

execution of the subcontract, copies of this Contract, to which the Subcontractor will be bound pursuant to the requirements of this Section III.B.4.

If a subcontract provided to the City does not comply with these requirements, the City's failure to object is not a waiver of them, and you will remain liable to the City for all damages, costs, fines, losses and claims arising out of the non-compliance.

3. In the case of Work performed by Subcontractors, Contractor must secure warranties from the Subcontractors addressed to and in favor of the City; deliver copies of them to the City upon completion of the Subcontractors' Work and; guarantee and assume full responsibility for the performance of any repair or replacement Work that may be required for the full period of the warranties provided. However, the delivery of the warranties will not relieve you from any obligations assumed under this Contract.
4. Contractor hereby collaterally assigns any or all subcontracts to the City, effective upon the City's exercise, in its sole discretion, of its right to assume such assignment as a remedy for Contractor's default or in the event of early termination. The Contractor must require each of your Subcontractors (including materialmen) to consent to a collateral assignment to the City of their respective subcontract with the Contractor. The Contractor's subcontracts must include language stating:

Contractor has collaterally assigned this subcontract to the City of Chicago, effective upon written assumption of such assignment by the City in the event of Contractor's default or early termination of Contractor's contract with the City. Subcontractor hereby consents to such assignment and assumption. Subcontractor acknowledges and agrees that, in the event of such an assignment and assumption, the City will have no liability to Subcontractor for work performed by Subcontractor prior to the effective date of the assignment and assumption and that Subcontractor shall look solely to Contractor for any compensation or other obligations arising under the subcontract prior to such date.

5. The City encourages Contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by § 2-92-586 of the Municipal Code, where not otherwise prohibited by Federal or State law.
6. Compliance with Multi-Project Labor Agreement (PLA). The City has entered into the PLA with various trades regarding projects as described in the PLA, which is hereby incorporated by reference. A copy of the PLA, with appendices, may be found on the City's website at <http://www.cityofchicago.org/PLA>. Contractor acknowledges familiarity with the requirements of the PLA and its applicability to any work under this agreement, and shall comply in all respects with the PLA.

C. Site Conditions and Inspection

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the site may be provided to you by the City. Such information is not warranted by the City to be accurate. You are not entitled to rely on it. In signing this Contract you are acknowledging that when such information appears in Contract documents, prepared by the City or its Consultants, the

City and its Consultants have not verified the information. Site plans do not constitute any representation by the City to you of site boundaries or characteristics.

2. You must take field measurements, verify field conditions and carefully compare those field measurements and conditions and any other information known to you with the Contract documents before commencing the Work. No allowance will be made to you for any extra labor and/or materials required due to site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the site. If land surveying Work is required under this Contract, you must have the Work performed by a land surveyor that is licensed as such by the State of Illinois.
3. If conditions are encountered at the site which are (i) subsurface or otherwise unknown or concealed physical conditions which differ materially from those indicated in the Contract; or (ii) pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Contract, including the presence of unanticipated Hazardous Materials, then you must provide immediate written notice to the Commissioner before proceeding with the work or disturbing those areas.
4. If the conditions differ materially from those indicated in the Contract, and cause a material increase or decrease in your cost or time required for the performance of any part of the Work, an equitable adjustment in the Contract Price or Contract Time, or both, will be made under Article XIV, "Changes in the Work."
5. You must keep on hand at the Work site, for reference, a complete set of Contract documents for the Work, copies of all plans and shop drawings, all additional and revised plans furnished by the City and all orders issued to you by the Commissioner that relate to the Work.

D. Cleaning Up

During the construction, you must keep the Work site and adjacent premises as free from material, debris, and rubbish as is practicable and must remove them entirely and at once, if in the opinion of the Commissioner, the material, debris or rubbish constitutes a nuisance, a safety hazard, or is objectionable in any way to the public. Upon verbal and/or written notification of unacceptable work day conditions by the City, you will be responsible for immediate rededication within 48 hours of notification. Your failure to act accordingly will result in completion of remediation work by the City at your expense.

As a condition of Final Completion and Acceptance of the Work, you must remove from the Work site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades and signs, and must restore the site to the same general conditions that existed before the Work began.

You must clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any portion of the Work, or existing work, due to your operations.

You are solely responsible for and must assume all liability associated with off-site disposal of any Hazardous Materials generated as a result of your construction activities.

E. Contractor's Warranties and Representations

You warrant and represent that:

1. You have carefully examined and analyzed the provisions and requirements of this Contract; you have inspected the Work site(s) to the extent made available by the City; from your own analysis you have satisfied yourself as to the nature and scope of work, all conditions, any obstructions and requirements needed for the preparation of your bid and the performance of this Contract, the general and local conditions, and all other matters that in any way may affect this Contract or your performance; and the time available for the examination, analysis, inspection and investigation was adequate;
2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that you can and will perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract;
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the City, its officials, agents, representatives or employees, has induced you to submit a bid nor have you relied upon any, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, that may be encountered at or on the Work site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions that may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter;
4. You were given ample opportunity and time to review the Contract documents before submittal of your bid in order that you might request an addendum to the Contract documents that might correct or clarify them; you did so review the Contract documents, and every such correction or clarification has been included in this Contract or else, if omitted, you expressly relinquish the benefit of them and are willing to perform this Contract in its entirety without claiming reliance on any such omission or making any other claim on account of the omission;
5. 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.
6. 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.
7. In accordance with § 11-4-1600(e) of the Municipal Code, 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;

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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 Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Contract, at law or in equity.

8. 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.
9. "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.
10. You understand that the City, in its acceptance of your proposal to perform the Work, materially relied upon your response to the Advertisement for Bids. The information you provided with the bid was accurate at the time it was made and no material changes in the information have occurred since then and will not be made without the express consent of the City.
11. In preparing and submitting your bid for this Contract, you have complied with and given full consideration to the following bidding requirements:
 - a. You obtained for bidding purposes copies of the complete Contract as identified in the Advertisement for Bids and all addenda issued by the City and have become familiar with them and all Contract requirements and conditions described in them;
 - b. You clarified to your satisfaction and complete understanding any doubt as to the true meaning and intent of all parts of the specifications and plans or other portions of the Contract documents;
 - c. You have no claim for relief because of alleged mistakes or omissions in your bid, and you will be held strictly to your bid as presented.
 - d. You have the capability and financial resources to perform all of the provisions and requirements of this Contract.

- e. You can perform all of your obligations under this Contract in accordance with all of the Contract's provisions and requirements.
12. Contractor warrants that no member of the governing body of the City or other units 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 Project to which this Contract pertains, has any personal interest, direct, or indirect, in this Contract. In accordance with 41 USC § 22, no member of or delegate to the Congress of the United States will be permitted to any share or part of this Contract or to any financial benefit to arise from it, nor, under applicable laws, will any member of or delegate to the Illinois General Assembly nor any alderman of the City or City employee. Contractor warrants that its officers, directors and employees, and the officers, directors and employees of each of member if a joint venture, and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Project that would conflict in any manner or degree with the performance of the Work under this Contract. Contractor further warrants that in the performance of this Contract, no person having any such interest will be employed.
13. Furthermore, if any federal funds are to be used to compensate or reimburse Contractor under this Contract, Contractor represents that it is in compliance with federal restrictions, and promises to remain so, including federal restrictions on lobbying set forth in § 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 USCS 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, Contractor must execute a Certification Regarding Lobbying, which is contained in the EDS attached to this Contract as an exhibit.

IV. PROPERTY

A. Ownership of Property

The City will be the owner of the Work, including any improvements, equipment and fixtures installed or constructed by Contractor, as part of the Project or for which the City has paid Contractor to store in anticipation of installation or construction. The City's title shall be free and clear of liens, claims, security interests or other encumbrances, upon the earlier of installation, payment therefore or Final Completion of the Project; provided, however, that transfer of title to the City shall not relieve Contractor of any of its responsibilities under this Contract with respect to Work in Progress. Nor will the transfer of title constitute acceptance of any portion of the work.

B. Ownership of Detailed Specifications and Other Contract Documents

- 1. The Detailed Specifications, plans and any copies of them furnished by the Commissioner are the property of the City. They are not to be used on other work. The City will provide you the number of Detailed Specifications and plans determined appropriate by the City. The City may provide you with additional copies at your request and at your cost. You are responsible for any loss or damage to the Detailed Specifications and plans while in your care and custody, and you must restore all

Detailed Specifications and plans that may be lost or damaged. Contract documents will be furnished as follows:

Contract Plans	10 Sets
Subsequent Details	10 Sets
Specifications and Contract Documents	10 Sets

2. You must obtain specifications issued by organizations other than the City to which reference is made in the City's documents at your own expense. You must also retain them at the Work site and make them accessible to the Commissioner.
3. The City is the owner of the Project. All documents, data, studies, reports, and instruments of service prepared for or by the City under this Contract are the property of the City. During the performance of your Work, you are responsible for any loss or damage to documents while in your possession or the possession of a Subcontractor and you must restore any such document so lost or damaged at your expense.

You must deliver, or cause to be delivered, at any time during the term of this Contract, all documents, including drawings, models, specifications, estimates, reports, studies, maps, and computations, prepared by or for the City, under the terms of this Contract to the City, promptly upon reasonable demand for them or upon termination of the Work. If you fail to deliver them when required, then you must pay the City all damages the City may sustain by reason of the failure, including consequential damages.

C. Right of Entry

1. You, and any of your officers, employees, agents, and Subcontractors, are permitted to enter upon any part of the Work site owned by the City in connection with the performance of the Work under this Contract, subject to the terms and conditions contained in this Contract and those rules that may be established by the Commissioner. You must provide advance notice to the City of any such intended entry. Consent to enter upon all or any part of the Work site given by the City will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the City.
2. Inspections: You acknowledge that the City has a right of access to the Work site at all times and the right to inspect all Work during the Contract period.
3. You must use, and must cause each of your officers, employees, agents, and Subcontractors to use, the highest degree of care when entering upon property owned by the City in connection with the Work. In the case of any property owned by the City, or property owned by and leased from the City, you must comply and must cause each of your officers, employees, agents, and Subcontractors to comply, with all instructions and requirements for the use of the property, including any licenses for them, which are incorporated by reference. All claims, suits, judgments, costs, or expenses, including reasonable attorneys' fees, arising from, by reason of, or in connection with any such

entry is treated in accordance with the indemnification provisions contained in this Contract.

D. Damage to City Property

If you cause damage to City property, you must, at the sole option of the City, either: (i) pay the cost of repair of the damage; or (ii) repair or replace any property so damaged. The City has the right to a set-off against its payments to you under this Contract for the cost of any such repairs. All cost to repair or replace any property so damaged will be completed before any final payment can be made to you by the City.

E. Right to Occupy Before Substantial Completion

1. The City may occupy and use the Project or portions of it in advance of Substantial Completion of the Work. If the City desires to exercise partial occupancy and use before Substantial Completion of the Work, the Commissioner will provide written notice to you, and you must cooperate with the Commissioner in making available for the City's use such Project services as heating, ventilating, cooling, water, lighting and telephone for space or spaces to be occupied, and if the equipment required to furnish the services is not entirely completed at the time the City desires to occupy and use the space or spaces, you must make every reasonable effort to complete that Work.
2. When the Commissioner determines that the City will use all or part of the Project before Substantial Completion, the Commissioner will determine:
 - a. The responsibility between the City and you for maintenance, repair, furnishing of utilities and the protection of the public (if required) for that part of the Work to be occupied;
 - b. The list of items remaining to be performed before the Work or portion of it to be occupied will be substantially complete;
 - c. Whether you will need any types of insurance; and
 - d. The effect of the City's use before Substantial Completion on required guarantees and warranties.

F. Final Completion and Acceptance of the Work

When you deem the Work to be complete, you must notify the Commissioner, in writing, that the Work will be ready for an inspection and/or test on a date you specify. The notice must be given at least 15 calendar days in advance of the date. If the Commissioner concurs that the Work will be ready for inspection or testing on the date given, the Commissioner will make the inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve you of your responsibilities under the Contract. You must cooperate in all respects in the scheduling and performance of the inspection.

Final Completion and Acceptance of the Work will occur only after the Commissioner determines that all Work, including Punch List Work, is complete and you submit to the

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Commissioner, within 180 calendar days or sooner from the Substantial Completion Date, a sworn affidavit stating the following:

1. All payrolls, invoices for materials and equipment and all other indebtedness connected with the Work for which the City might in any way be responsible have been paid or otherwise satisfied;
2. All waivers of lien required by the Contract have been provided to the Commissioner;
3. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier and others against you, the City, any agents or representatives of the City pertaining to the Work required under this Contract were provided in writing to the Commissioner and have been resolved;
4. The warranties and guarantees required by the Contract have been provided to the Commissioner;
5. All warranties and guarantees are in full force and effect;
6. The surety's written consent, signed by its authorized representative, to final payment being made directly to you is attached to the affidavit;
7. Acceptance of final payment will constitute a general release to the City, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of the City or its agents, representatives, officials and employees relating to or connected with this Contract;
8. Record Documents, including Record Drawings, Record Shop Drawings and operation and maintenance manuals have been provided to the Commissioner;
9. All other documents requested by the Commissioner have been provided; and
10. Wages paid and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

FINAL CERTIFICATE

The undersigned, Contractor on _____ (Specification No: /Contract No. _____) certifies that all laborers, mechanics, apprentices and trainees employed by it or by a Subcontractor performing Work under the Contract have been paid wages at rates not less than those required by the Contract provisions, and that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

Signature and Title

Name
Authorized Officer

Title

Contractor:

Project:

V. SHOP DRAWINGS, PRODUCT DATA, RECORDS AND SAMPLES

A. Contractor's Responsibilities and Submittal Procedures

1. Shop Drawings, Product Data, Samples are part of the Work under this Contract, and if also specified, video tape and/or photographs. You must provide them at your expense to the satisfaction of the Commissioner.
2. You must submit to the Commissioner those Shop Drawings, Product Data, Samples, video tape and photographs required for the Work involved under this Contract in accordance with the Schedule.
3. The Schedule must include a schedule of proposed submittal dates. The dates listed in the Schedule must allow sufficient time for review and processing of Shop Drawings or other data by the City and your re-submittal of them, if necessary, before you will need them to complete your performance of the Work they represent under this Contract. No extensions of time will be granted to you because of your failure to have Shop Drawings, Product Data, Samples, video tape and photographs submitted in time to allow for review, re-submittal and final review. You must also submit a separate submittal schedule (in table format), in addition to the Schedule, identifying all Submittals with submittal dates to the Commissioner for review and approval.

In preparing the Schedule, you must allow 28 days for review and 14 days for processing into and out of the office. Every reasonable effort will be made by the Commissioner to hold to the time for normal submittals.

4. You must prepare and submit proper Shop Drawings, Product Data, Samples, video tape and photographs in accordance with your contractual obligations. By submitting them, you represent that you have determined and verified all materials, field measurements, field conditions and quantities, and that you have checked and coordinated the information contained within the Submittal, including your Subcontractors' Submittals, with the requirements of the Work and of the Contract.
5. You must date and stamp all Shop Drawings, Product Data, Samples, video tape and photographs. You must also indicate on them that you have reviewed and checked them before submission and found to be in conformance with the Contract. All Submittals must be transmitted to the Commissioner. You must clearly mark each Shop Drawing, Video Tape, Product Data and Sample, in accordance with the following for purposes of identification and record:

SUBMITTAL IDENTIFICATION

Name of Project: _____

Contract Name and Number: _____

Date of Submittal: _____

Submittal Number: _____

Re submittal of Submittal Number: _____

Identification of Deviations from Contract documents: _____

Specification Section, Page, and Paragraph No. and/or Drawing No.: _____

Type of Material and Manufacturer: _____

Intended use: _____

Applicable Standards such as ASTM numbers: _____

CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATIONS.

Contractor: _____

By: _____ Date: _____

6. Shop Drawings must be submitted with accurate dimensions. The Shop Drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Cross-section drawings must indicate minimum clearances and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified before submission for review.
7. The Commissioner's review and acceptance of Shop Drawings in no way relieves you from responsibility for errors or omissions that may exist in the Work or on the certified Shop Drawings. Where such errors or omissions are discovered, you must correct them at no additional cost to the City. Submittals must be sufficiently complete to allow for

proper review. You must submit all Shop Drawings, Product Data, Samples, video tape and photographs to the Commissioner for review with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. You must coordinate Submittals into logical groups or sets to facilitate review of several related items.

8. Any Submittal that in the Commissioner's sole opinion is not complete and in proper form will be returned to you without review. You must not submit as Shop Drawings duplicates or reproductions of any Contract documents issued by the City.
9. You must provide Submittals in the following quantities unless a greater number is specified elsewhere in the Contract or is required by the Commissioner:
 - a. Shop Drawings: Submit one reproducible transparency and six opaque copies of shop drawings;
 - b. Product Data: Submit six copies of Product Data;
 - c. Samples: Submit four samples; and
 - d. Video and photographs (when required under the Contract): Submit two copies of Video and photographs.
10. Before submitting Shop Drawings, Product Data, Samples, video tape and photographs, you must notify the Commissioner in writing of any deviations in the Submittals from the requirements of the Contract. If deviations from the Contract requirements are rejected by the Commissioner or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensable by a time extension.

B. Review by the Commissioner

1. Submittals will be reviewed by the Commissioner for compliance with the Contract. In reviewing them the Commissioner will not verify dimensions and field conditions. Any such review does not relieve you, your Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract, nor does it relieve you or them from responsibility for (i) errors of any sort in Shop Drawings, Samples and Product Data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract that may not be indicated on Shop Drawings when reviewed. You are solely responsible for any quantities that may be shown on the Shop Drawings. The Commissioner's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. You must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from the Commissioner with a stamp authorizing Work and/or delivery and installation to be performed, as described in Section V.B.3, immediately below.
3. The Commissioner will return Submittals stamped as follows:
 - a. "No Exceptions" means no changes need be made on the reviewed Submittal. You may proceed with the Work for that Submittal.

b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. You may proceed with the Work for that Submittal but only if you incorporate the Commissioner's comments, and/or corrections. Re-submittal is not required, but the corrections must be reflected in the Record Documents.

c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to proceed with the Work associated with the Submittal. You must resubmit in accordance with the reviewer's comments and/or corrections. Submittals marked in this manner must not be released for fabrication, delivery or construction.

4. If the Submittal requires revision, you must notify the Commissioner and all pertinent Subcontractors, in writing, that the reviewed set has been withdrawn.
5. Submittals that require revisions must be corrected and resubmitted to the Commissioner to maintain the approved CPM schedule, but in no event more than five days after receipt of the Commissioner's comments.
6. Shop Drawings: After review by the Commissioner, one reproducible stamped by the Commissioner as previously described in Section V.B.3 above will be returned to you.
7. Submission and Review of Samples: If a considerable range of color, graining, texture or other characteristics may be anticipated in finished products, you must furnish a sufficient number of Samples of the specified materials to indicate the full range of those characteristics that will be present in the finished products. Any product delivered or erected without submission and review of full-range Samples is subject to rejection. Each tag or sticker must have clear space for your stamps and those of the Commissioner. Notice of the result of the review will be provided to you with one of the stamps indicated in Section V.B.3 above. Rejected samples will be returned. Accepted samples will be retained by the Commissioner and become the property of the City. Where color samples are required to be submitted, color samples must be submitted in the actual material that will finally be installed in the Work. The various parts of the Work must be in accordance with the reviewed and approved Samples.
8. Product Data: After review by the Commissioner, two sets of Product Data stamped by the Commissioner as previously described will be returned to you.

C. Source of Materials

You must notify the Commissioner in writing as soon as possible after the Contract has been awarded, but not less than three weeks before the need for inspection and testing of the source (or sources) from which you expect to obtain the various construction materials. The source of supply of each material used must be approved by the Commissioner before delivery is commenced. If sources previously approved are found to be unacceptable at any time and fail to produce materials satisfactory to the Commissioner, you must furnish materials from other approved sources.

D. Record Documents

At Substantial Completion, you must deliver to the Commissioner, in suitable transfer cases clearly marked "Record Documents," all Record Drawings, Record Shop Drawings, warranties and guaranties, photographs, video Records (if any are required), Product Data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed.

E. Record Drawings

1. As the Work progresses, you and the Subcontractor for each trade or division of work, under your direction must keep a complete and accurate record of the following:
 - a. Changes between the Work as shown on the Contract drawings and the Shop Drawings indicating the Work as actually installed;
 - b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements that were not accurately located or changed location or elevation from that shown on the Contract drawings; and
 - c. Equipment schedules indicating manufacturers' names and model numbers installed.
2. You must record changes neatly and correctly daily on blue line prints of the Contract drawings updated daily. You must keep this record set of Contract drawings at the job site for inspection by the Commissioner. Upon completion of the Work, you must submit a final set of full-size prints to the Commissioner for review and acceptance.
3. At the time Record Drawings are delivered to the Commissioner, you and each Subcontractor must certify, in writing, that the Record Drawings are complete and accurate.

F. Record Shop Drawings and Product Data

1. As the work progresses, you must keep a complete and accurate record of the changes and deviations from the Work as shown on the Shop Drawings and Product Data indicating the Work performed. You must furnish Record Shop Drawings in a form and quantity acceptable to the Commissioner. Record Shop Drawings must be submitted for all items reviewed as Shop Drawings. Record Shop Drawings must be legibly drawn on sheets of Mylar or such other medium as directed by the Commissioner. Record Shop Drawings must be submitted on the same size sheets as the Contract Document drawings and include an index of all items.
2. You must furnish six record copies of Product Data in loose leaf binders. Loose leaf binders must be subdivided by Submittal numbers and must contain an index of all items.

G. Construction Progress Photographs

You must submit to the Commissioner construction progress photographs consisting of exterior and interior views of the Work, with the date and location of the photographs as selected and directed by the City. If requested at any time by the Commissioner, you must use digital photography, at the resolution specified by the Commissioner. You must provide three prints of each view to the Commissioner within five days of taking the photographs. If digital photography is not requested or until it is requested, then you must provide each photograph on an 8" x 10" smooth surface, glossy, black and white print, on single-weight commercial-grade stock. The 1" wide margin, which is punched for a standard 3-ring binder, will have a left-sided margin for vertical shots and a top-sided margin for horizontal shots. A label will be included on the front bottom margin, which will contain the project name and date that the photograph was taken. On the back of each print, you must provide an applied label or rubber stamp impression with the following information:

1. Name of the Project;
2. Name and address of the photographer;
3. Name of the Architect ;
4. Your name;
5. Date the photograph was taken;
6. Description of vantage point , in terms of location, direction (by compass point), and elevation or level of construction.
7. Notation of vantage point marked for location and direction of shot on a key plan of the site and building, with elevation (story height) noted.

The photographs must be taken monthly, coinciding with the cutoff date associated with each application for payment. From time-to-time the City may issue a request for additional photographs, in addition to the periodic photographs specified. Additional photographs are not included in the Contract Price and will be paid for by Change Order.

H. Instructions, Parts List and Operation and Maintenance Manuals

You must furnish a complete list of equipment actually installed. The list must include a copy of pertinent nameplate data, name and address of local representative who stocks or furnishes repair or replacement parts, and name, address, and telephone number of the Subcontractor responsible to you for the equipment under the guarantee. You must guarantee any such equipment with respect to the City.

You must submit suitable operating instructions for each major component of equipment and its controls. Instructions must include a schematic diagram accurately showing equipment and controls as installed. Included with each diagram must be a set of simple operating instructions stating how the system is stopped and started, what adjustments are to be made by the operator, and what to do in case of an emergency. Five copies of proposed instructions must be submitted to the Commissioner for review and acceptance. Upon acceptance, you must post applicable instructions as directed by the Commissioner.

You must submit maintenance data prepared by the manufacturer of each major component of equipment and its controls. Data must include complete parts list, itemized lists of common purchase items of materials (e.g., bearings, packing, connectors, sealing devices, and other standard items) indicated by their standard trade designation, recommended routine and inspection maintenance, including testing recommendations to evaluate efficiency of performance, lists of special tools and gauges, lubricating instructions, and recommended spare parts lists, tolerances and clearances required for maintenance, and trouble-shooting guides prepared in a simple format to indicate complaint or problem, probable cause, and remedy. You must submit five copies of the proposed maintenance data to the Commissioner for review and acceptance in accordance with Article XV.

I. Adjustment of Equipment

Before the Work is turned over to the City, you must furnish the necessary instruments, test equipment, services, and personnel required to adjust and balance each piece of equipment in order to provide a smoothly functioning, well-integrated system complying with the letter and intent of the Contract.

J. Project Account Records

1. Project Data and Records

- a. You and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers and mechanics employed by them in connection with the Work. The record must be open at all reasonable hours to the inspection of the Commissioner and to the Director of Labor of the State of Illinois and his deputies and agents. You also must furnish the Commissioner and the Chief Procurement Officer with certified copies of the payrolls, in accordance with Section XIII.B.3.d.
- b. You must furnish to the Commissioner upon request a written statement, verified by affidavit, giving the names and addresses of all persons, firms and corporations who have up to that date furnished labor or materials in the performance of the Contract and the amounts due or to become due them.
- c. You and all Subcontractors must furnish the Commissioner with such information as the Commissioner may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution and any other information that the Commissioner may require. You must, on request, furnish the Commissioner with copies of delivery tickets and invoices, in triplicate, covering the expenditures on the Contract.

2. Audits

- a. You and your Subcontractors must furnish the Commissioner such information as he may request regarding the progress, execution, and cost of the Work. You must maintain complete records showing actual time devoted and costs incurred, adopting accounting procedures and practices sufficient to record properly all costs of

whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the Work. This system of accounting must accord with generally accepted accounting principles and practices, consistently applied throughout. You must maintain its books, records, documents and other such evidence for five years after final payment.

- b. All books and accounts you and your Subcontractors are required to keep in connection with the Work under this Contract must be open to inspection and audit by authorized representatives of the City at reasonable times during the performance of the Work, and they must be retained in a safe place and available for inspection and audit during the five-year period after final payment, as provided above. No provision in this Contract granting the City a right of access to records and documents is intended to impair, limit, or affect any right of access to such records and documents that the City would have had in the absence of such provisions.
- c. If the City, in its sole discretion, chooses to conduct an audit either during the performance of the Work or in the five-year period after final payment, each audited calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that you or any of your Subcontractors have overcharged the City in the audited period, the City will notify you. You must then promptly reimburse the City for any amounts the City has paid you due to the overcharges and also some or all of the cost of the audit, as follows:
 - (i) 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 you 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;
 - (ii) 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 you must reimburse the City for the full cost of the audit and of each subsequent audit.
- d. Your failure to reimburse the City in accordance with V.J.2.c above is an event of default under this Contract, and you will be liable for all of the City's cost of collection, including any court cost and attorneys' fees.

3. Confidentiality

All of the reports, information, or data, prepared or assembled by or provided to you under this Contract are confidential and except as specifically authorized in this Contract or as may be required by law, you must not make available the reports, information, or data, to any other individual or organization, without the prior approval of the Commissioner. This requirement will survive expiration or termination of this Contract.

4. Electronic Records

Upon request by the Commissioner, Contractor shall provide the City electronic versions of any hard-copy record documents that the Contractor is required to prepare by the Contract.

VI. ASSIGNMENT

A. Assignment of Contract by Contractor

You must not assign the Contract, in whole or in part, without the prior written consent of the Chief Procurement Officer. The consent of the Chief Procurement Officer will not relieve you from any obligations under this Contract, or in any other way change the terms of this Contract.

B. Assignment of Funds or Claims by Contractor

You must not transfer, pledge or assign any Contract funds or claims due or to become due without the prior written consent of the Chief Procurement Officer. The transfer, pledge or assignment of any Contract funds, either in whole or in part, or any interest in the Contract funds, that are due or to become due to you, without the prior written consent of the Chief Procurement Officer, is void with respect to the City.

C. Assignment of Contract by City

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

D. Assigns

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

E. Requests to Subcontract

All requests to subcontract must be accompanied by three copies of a written subcontract agreement that sets forth the scope of services to be subcontracted, the lump sum or unit price for the services and the signature of the subcontracting parties. Proposed Subcontractors must not commence Work on any portion of the Project without prior written approval by the Chief Procurement Officer.

VII. QUALITY OF WORKMANSHIP, EQUIPMENT AND MATERIALS

A. Standard of Performance

In addition to performing the Work in full compliance with the Contract you must perform, or cause to be performed, all Work required of you under the terms and conditions of this Contract with that degree of skill, care, and diligence normally exercised by qualified and experienced contractors in performing work in projects of a scope and magnitude comparable to the Work.

B. Correction of Work

1. You must, upon discovery of any defective or non-conforming Work, or when directed in writing by the Commissioner, promptly re-perform, correct or remove all Work identified to be defective or as failing to conform to the standards set forth in, or any requirement of the Contract, whether or not completed. You must bear all costs of correcting the defective or non-conforming Work, including costs associated with removing any defective or non-conforming Work, replacing the defective or non-conforming Work with non-defective, conforming Work and any compensation for any additional equipment, materials and/or services made necessary by the removal and replacement.
2. If you do not proceed with re-performance, correction or removal of the defective or non-conforming Work after written notice from the City within the time period designated by the notice, the City may correct or remove it and may store the materials and/or equipment at your expense, then complete the corrective Work. If you do not pay the costs incurred for the removal, storage and correction within 10 days after you receive written notice from the City of the amount of the costs, the City may upon 10 additional days' written notice, sell any such materials and/or equipment at an auction or at a private sale and will account for the net proceeds, after deducting all the costs you are required to bear, including compensation for the City's services. If the proceeds of sale do not cover all costs for removal and correction of the Work, the difference will be charged to you with a deduction of any amounts due you, and an appropriate Contract modification will be issued. If later payments due you are not sufficient to cover the amount, you must pay the difference to the City, or the City may deduct the amount from any other funds due to you, including any amounts due under any other contract between City and you.
3. You must not perform any work without lines and grades or beyond the lines shown on the drawings or outside the scope of the Contract, without the prior written consent or direction of the City. It is not authorized, and if you do so you perform it at your sole expense. Upon direction of the City, work so done must be removed or replaced and those areas restored to their previously existing state at your sole expense.
4. Neither the determination of Final Completion and Acceptance of the Work, nor payment, nor any provisions in the Contract will relieve you of responsibility for defective or non-conforming Work, faulty materials, equipment or workmanship, and unless otherwise specified, you must remedy any defects due to the foregoing and pay for any damage to the Work or other property resulting from defective or non-conforming Work, or faulty materials, equipment or workmanship throughout the Warranty Period, as defined in Section VII.E, "Warranties," below, or such other period of time afforded by industry custom or law, whichever is longer. The City will give you written notice of the observed defects with reasonable promptness.

C. Materials and Equipment

1. Quality of Materials. Unless otherwise specified in the Contract you must use all new materials for the Project and use them in such a manner as to produce completed Work that conforms with the Contract and is acceptable in every detail to the Commissioner. Only materials that conform to the requirements of these specifications may be

incorporated or used in the Work. In the absence of a definite specification, materials must be the best of their respective kind with properties best suited to the Work required.

2. **Materials Inspection and Responsibility.** Before any material is incorporated into the Work, you must submit a "Request for Materials Inspection" to the Commissioner. You are solely responsible for submitting the requests with sufficient time for the City to conduct its inspection. You are not entitled to payment for uninspected materials. The City has the right to inspect any material to be used in carrying out this Contract. The City does not assume any responsibility for the availability of any materials or equipment required under this Contract. By performing any tests or accepting any materials, the City in no way relieves you of any of your obligations or responsibility under this Contract. Materials, components or completed Work that do not comply with the Detailed Specifications and other requirements of this Contract may be rejected by the City, and you must replace them at no additional cost to the City. After you receive notice from the City that materials or components have been rejected, you must promptly remove them from the City's premises at no additional cost to the City.

D. Substitution of Materials

1. The City will consider your request for substitution in cases of product unavailability or other conditions beyond your control.
2. You must submit each request for substitution separately and each must include:
 - a. Complete data substantiating compliance of proposed substitution with requirements stated in the Contract;
 - (1) Product identification, including manufacturer's name and address
 - (2) Manufacturer's literature identifying:
 - (a) Product description
 - (b) Reference standards
 - (c) Performance and test data
 - (3) Samples, as applicable
 - (4) Names and address of similar projects on which the product has been used, and date of each installation;
 - b. Itemized comparison of the proposed substitution with product specified that lists significant variations;
 - c. Data relating to changes in the Schedule;
 - d. Any effect of substitution on other parts of the Work, any Subcontractors, or any separate contracts;
 - e. List of changes required in other Work or products;
 - f. Accurate cost data comparing proposed substitution with product specified, including the amount of any net change to Contract Price;
 - g. Designation of required license fees or royalties; and

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Terms and Conditions for Construction Contract - Book 1 (May 2017)

1. Your written warranty will include the name of the project as designated in the Contract, be signed by an officer of the company having authority to provide the warranty, and state: "This document serves as a one - year written warranty for the Work performed, and material and equipment installed on the above referenced project. This warranty incorporates all provisions of the Contract that refer or relates to the warranty. This warranty begins on (date) ."
2. Contractor's Warranty Obligations:
 - a. During the Warranty Period, you must repair and replace at your own expense, when so ordered by the Chief Procurement Officer or the Commissioner, all Work that may develop defects whether these defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material that is so repaired or replaced will have the Warranty Period extended for a period of one year from the date of the last repair or replacement.
 - b. You must bear all costs associated with any repair or replacement under this section, including removal, material, transportation, and reinstallation.
3. Manufacturer's Warranties
 - a. You must:
 - (1) ensure that all required Manufacturer's Warranties pass through to the City and the Department;
 - (2) submit all applicable manufacturers' warranties to the Commissioner and ensure that all warranty forms have been completed in the Department's name and registered with the appropriate manufacturers.
 - b. Whenever you make repairs or provide replacements under Section VII.E.3, you must provide a manufacturer's warranty for the repaired or replaced Work, if standard with the manufacturer, in addition to your warranty under Section VII.E.2.

VIII. PERSONNEL

A. Competency of Workers

You must employ only competent and efficient laborers, mechanics or artisans on the Work, as demonstrated by completion of a specific training program or demonstrated project experience. Whenever, in the opinion of the Commissioner, any worker is careless, incompetent, violates safety or security rules, obstructs the progress of the Work, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this Contract, you must, upon request of the Commissioner, remove the worker from the Work. You must not permit any person or worker to enter any part of the Work or any buildings connected with it who is under the influence of intoxicating liquors or controlled substances.

B. Supervision and Superintendence

While Work is in progress, either by your labor force or that of your Subcontractor, you must have a full-time, experienced and qualified superintendent assigned to the Work. You must superintend the Work and must have a competent superintendent at the job site at all times with authority to act for you as the contact person with the Commissioner.

C. Contractor's Project Personnel

No separate payment will be made to you for the cost of personnel. Those costs must be included in the Contract Price.

D. Key Personnel

Upon award of the Contract, you will submit a project staff organization chart that includes the names and resumes of employees in key positions for this project. All employees in key positions must be approved by the Commissioner.

You must employ and assign to work on this Contract a qualified engineer as a project manager with a valid Professional Engineer's License in the State of Illinois, satisfactory to the Commissioner, to act as a contact person with the Commissioner and a Registered Land Surveyor to set and maintain the lines and grades necessary for the proper performance of the Work under this Contract.

Changes in the assignment of any key personnel due to commitments not related to this Contract are prohibited without Commissioner's approval. If any key personnel, selected in accordance with the key personnel provisions under this section of the Contract, should become unable to continue in the performance of the assigned duties for reasons due to death, disability or termination, you must promptly notify the Commissioner and explain the circumstances.

Under a request by Commissioner, you must provide to the Commissioner, within seven days, the name of the person substituting for the individual unable to continue, together with any information the Commissioner may require to judge the experience and competence of the substitute person. Upon approval by the Commissioner, the substitute person will be assigned to the project. If the Commissioner rejects the substitute, you will have seven days after that to provide the name a second substitute person, with any information the Commissioner may require, until a proposed replacement has been approved by the Commissioner.

E. Davis-Bacon Prevailing Wages

The Contractor agrees to comply and assures compliance with the requirements of 49 U.S.C. 5333(a), the Davis-Bacon Act, 40 U.S.C. 276 a(7), and implementing U.S. DOL regulation, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5. In addition to other requirements that may apply, the Contractor agrees to pay wages to laborers and mechanics performing contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. The Contractor agrees to place a copy of the

current prevailing wage determination issued by the U.S. DOL in each solicitation for Subcontractor work under the Project, and agrees to refrain from awarding any affected subcontract until the subcontractor agrees to the required wage determination.

You must report to the FHWA every suspected or reported violation of the Davis-Bacon Act or its federal implementing regulations.

F. Copeland “Anti-Kickback” Act

You must comply with the Copeland “Anti-Kickback” Act, 18 USC § 847 and 40 USC § 276c and U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part By Loans or Grants From the United States” 29 CFR Part 3. In addition to other requirements that may apply:

You must not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.

You must report every suspected or reported violation of the Copeland “Anti-Kickback” Act or its Federal Implementing regulations to the FHWA.

As a condition of making payment to you, the City may request you to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Contract in accordance with applicable law.

G. 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, 2016 is \$13.15 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.

H. "Living Wage"

1. Section 2-92-610 of the Municipal Code of Chicago provides for a base 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 Section 2-92-610 and regulations promulgated thereunder:
 - (a) if the Contractor has twenty-five (25) or more full-time employees, and
 - (b) 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 twenty-five (25) or more full-time security guards, or any number of other full-time Covered Employees, then
 - (c) the Contractor must pay its Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "Base Wage") for all work performed pursuant to the Contract.

2. 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 (a) and 1(b) above are met, and will continue thereafter until the end of the Contract term.
3. As of July 1, 2016, the Base Wage is \$12.15 per hour. Each July 1st, thereafter 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 two thousand (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.

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.

4. The Contractor must include provisions in all subcontracts requiring its subcontractors documentation acceptable to the Chief Procurement Officer 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 (3) years.
5. 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 of Sections 1 through 4 above do not apply.

I. Working hours in city contracts

Eight hours constitutes a legal day's work under this Contract, in accordance with § 2-92-220 of the Municipal Code of Chicago.

IX. PERMITS AND LICENSES

A. Contractor Obtains Permits

Whenever the Work under this Contract requires permits to be obtained from the City or other public authorities, you must obtain them and furnish triplicate copies of the permits to the City before the Work covered by them is started. **NO WORK IS ALLOWED TO PROCEED BEFORE SUCH PERMITS ARE OBTAINED.**

The City will obtain permits required from the Metropolitan Water Reclamation District of Greater Chicago, the Illinois Division of Waterways and the U.S. Army Corps of Engineers.

B. Contractor Pays Permit Fees

The special use of, or removal, alteration or replacement of certain City-owned facilities and appurtenances such as traffic signs, parking meters, trees, sewers, hydrants, bridges and viaducts which are required for you to perform your Work are subject to all applicable Municipal Ordinances. It is your responsibility to obtain all the necessary permits and pay the associated fees. You must furnish copies of the permits to the City before the Work covered is started. Information with regard to the above may be obtained by contacting the appropriate City Departments.

C. Occupancy Placard and Fees

You must provide an occupancy placard indicating occupancy and floor plans based upon key plans provided by the Architect. It is your responsibility to pay all fees and expenses related to providing the occupancy placard.

X. COORDINATION WITH OTHER CITY DEPARTMENTS

A. Water System Work and Usage

If water from a City hydrant is necessary for the execution of the Work, you must obtain a hydrant permit from the City's Department of Water Management. You must obtain a permit from that department also for any construction, repair or adjustment of any water main, branch or service connection. Requests for permits must be made at the **Department of Water Management, City Hall, 121 North LaSalle Street, Room 906, Chicago, Illinois 60602; 312/744-7060.**

B. Sewer System Work

If you will be constructing, repairing, adjusting or cleaning any subsurface structure designed to collect or transport storm and/or sanitary waste water, either in private property or in the public way you, through a licensed drainlayer, must obtain a permit issued under this Section X.B. (A licensed drainlayer is a person possessing a current sewer and drain license issued by the Department of Water Management.) Requests for permits must be made at the **Department of Buildings, Sewer Engineers, Address: 121 N. LaSalle St., Room 906, Chicago, IL 60602; Telephone: 312-744-3351.**

Project plans must be submitted to the Department of Water Management (Sewers and Drains) sufficiently in advance for examination and review. Plans meeting the department's requirements must be submitted with the application for permit at least four days before the issuance of permit. When applying for a permit, you must submit three sets of plans that show all new underground sewer Work inside and around the project with a clear site or location plan together with the estimate of quantities for sewer sizes and sewer structures to be installed.

A copy of the permit must be on the Work site before the start of construction. Failure to obtain a permit before the start of construction will result in a penalty and could result in the revocation of the drainlayer's license.

You must arrange for sewer inspections at least 48 hours before the start of Work. Inspections may be requested by calling **(312) 743-7477 for Plumbing Inspections and (312) 744-5502 for Mason Inspections.**

C. Parking Meter Removal and Replacement

The City via the metered parking concessionaire shall close or remove and opened or reinstall any parking meters, including signs indicating pay boxes, as may be required. However, you must pay all fees and lost meter revenues required by § 9-68-050 of the Chicago Municipal Code. You must advise the Department of Transportation, Bureau of Inspections, Construction Compliance Section (Public Way Permits), Room 804, City Hall, Chicago, Illinois 60602, in writing at least two weeks in advance of the closure citing the location and meter number of the meters to be closed or removed. Closures of less than 6 hours on a given day and limited to less than 10 business days are strongly encouraged, and you must be prepared to detail any reason requiring closures of a longer hourly and daily duration.

You may not remove any parking meters without the express written consent of the Commissioner. If you violate this provision, you (a) recognize that the City will suffer damages as a result, including the costs incurred by the City in tracking, retrieving, and repairing damage to the parking meters, and (b) will be liable for liquidated damages in the amount of \$350 for each single-space parking meter or \$10,000 for each pay box you removed. All amounts, including any other debts, will be deducted from any amounts due or that may become due you.

Notification must be provided immediately once meters can be opened or reinstalled. That notification must be e-mailed to the Department of Revenue at parking-meter-closure@cityofchicago.org. Please include "REOPEN/REINSTALL" in the subject line and provide details concerning permit numbers, locations, and dates that the meters may be opened or reinstalled.

The City of Chicago Department of Transportation and the Department of Revenue may modify these requirements in the future.

D. Traffic and Parking Sign Removal and Replacement

The City will remove and re-install any traffic and parking sign(s) as may be required, however, you will be responsible for all fees relative to the removal and replacement of all of the City's traffic and parking signs. You must inform the Bureau of Signs and Markings, in writing, of the location of each sign to be removed and specify its distance from the property line of the nearest cross street. Each sign legend must also be stated. This information must be provided at least five days before removal. You must also inform the Bureau of Signs and Markings, in writing, of when signs may be reinstalled as soon as this date is known. Contact the **Bureau of Signs and Markings, 3458 S. Lawndale, Chicago, Illinois, 60623, Attn.: Deputy Commissioner, (312)747-2210.**

E. Trees

In accordance with § 10-32-060 *et seq.* of the Municipal Code, you must obtain a permit from the Bureau of Forestry when removing planting, trimming, spraying, or in any way affecting the general health or structure of trees in the public way. There is no fee for this permit. The permit must be obtained from the **Bureau of Forestry Permits Division; 2352 S. Ashland Av., Chicago, IL 60608 312-746-5254, fax 312-743-8030**. The Bureau of Forestry requires 48 hours' notice before starting Work for all activities with the exception of tree planting, which requires two weeks' prior notice. To obtain tree planting permits, two copies of the site plan must be presented to the Bureau for its review and approval. A Bureau representative must also assist in the selection of those trees to be planted in the public way. Tree planting standards and specifications are outlined in the Bureau of Forestry's "Manual of Tree Planting Standards," which is available upon request from the Bureau of Forestry.

F. Demolition

If demolition of a structure or removal of an underground storage tank is required during construction, you must obtain a permit and pay the required fee as set forth in the Municipal Code and its amendments to date. The permit must be obtained from the **Department of Buildings, City Hall, 121 North LaSalle Street, Room 900, Chicago, Illinois 60602; (312/744-3400)**.

XI. SCHEDULE

A. Time

1. The date for commencement of the Work is the date set forth in the Contract or such other date as may be established at the discretion of the Commissioner in a Notice to Proceed. Within five calendar days after the award and release of the Contract, you must provide the Commissioner, a schedule for the performance of the Work, which complies in all respects with the Contract, within the Contract Time. The schedule may be used as a means of determining the progress of your performance of the Work, but neither the provision of the schedule to the City, nor the City's acceptance or use of the schedule, acts in any way to relieve you of any of your obligations under the Contract.
2. Progress and Completion. **TIME IS OF THE ESSENCE IN THIS CONTRACT.** No time extensions will be allowed unless they are contained in a Contract Modification that has been approved and executed by the City. Liquidated damages will be assessed against you for late completion of the Work and failure to achieve any milestone dates that provide for liquidated damages set forth in the Contract. You must not suspend any Work that may be subject to damage by climatic conditions without the Commissioner's prior written approval. Notwithstanding any other terms contained in this Contract, you must take measures to protect the Work and to minimize the impact of such conditions on the progress of the Work.

B. Progress Schedule

1. You must begin performance of the Work and to prosecute it with all due diligence, so as to complete the entire Work under this Contract within the Contract Time stipulated, after the date of commencement of Work, as specified in the written Notice to Proceed to you. The date for the commencement of Work is not counted as a day, but each day after that, from midnight to midnight, is counted as one day and the last day counted is the date of Final Acceptance and Completion of the Work. You must, when necessary, use overtime, multiple shifts, weekend and/or holiday work to maintain the approved schedule at no additional cost to the City.
2. Except when otherwise specified by the Commissioner, you must provide the progress schedule ("Schedule") for the Work using the Critical Path Method ("CPM") as described in Section XI.D, "Critical Path Method Schedule," below.
3. The Commissioner's approval of your Schedule is done for the sole purpose of insuring that all CPM scheduling documents you prepare are in conformance with the Contract requirements. This approval does not relieve you of the responsibility for the means, methods, procedures and sequence of the construction process nor does it entitle you to additional funds for completing Work in a period that is less than the Contract Time.
4. Daily Progress Reports: You and all Subcontractors must prepare and submit to the Commissioner daily progress reports on the various parts of the Work, including in the report the number of workers and the classification of the trades involved, equipment used and any pertinent information regarding possible delays in the Work.

C. Construction Operations Plan

1. You must, within 14 days after Notice to Proceed, submit to the Commissioner for review the order of procedure you propose to follow in performing the Work. Work begins only after your proposed order of procedure in performing the Work and the Schedule have been submitted to and consented upon by the Commissioner, in writing. You understand that a reasonable amount of time is required by the Commissioner for the examination of the procedure and Schedule. As Work progresses, changes or modifications in the procedure and Schedule, may be required by the Commissioner. In that event, upon notice from the Commissioner to you, further Work is performed only in accordance with the changed or modified procedure and Schedule as have been submitted to and consented upon, by the Commissioner, in writing.
2. The Commissioner, in his/her sole discretion, may reject or require modification of any proposed or previously approved order of procedure, that he or she considers to be unsafe for the Work under this Contract, or for other Work being carried on in the vicinity, or for other structures, or for the public, or for workmen, engineers and inspectors employed thereon, or that will not provide for the completion of the Work within the period of time specified in the Schedule, or that is contrary to any other requirement of this Contract.
3. The City's acceptance or approval of any order or procedure or equipment that you submitted or employ does not in any manner relieve you of responsibility for the performance of the Work, or for the safety of the performance of the Work under this

Contract, or from any liability whatsoever on account of any procedure employed by you, or due to any failure or movement of any structure or equipment furnished by it. Notwithstanding any approval by the Commissioner, should any structure or equipment installed under this Contract afterwards prove insufficient in strength or fail in any manner whatsoever, the insufficiency or failure in no way forms the basis of any claim for extra compensation for delay, or for damages or expenses caused by the insufficiency or failure, or for an extension of time for completion of the Work, or for material, labor or equipment required for repairing or rebuilding the structure or equipment, or for repairing or replacing any other Work that may have been damaged by the movement or insufficiency or failure of any such structure or equipment, respectively.

D. Critical Path Method (“CPM”) Schedule

1. You must format the Schedule to show the proposed starting and completion date for the various stages of the Work, including any float time, and must prepare it in such a way that it can be used to plot actual progress against proposed progress. You must update the Schedule and submit it to the Commissioner no less than monthly or as directed by the Commissioner. The Commissioner may request more frequent Submittals. Monthly payment will be withheld for failure to submit updated Schedules. One copy of the Schedule must be submitted to the Commissioner in a reproducible format. A copy of the Schedule must be submitted on a computer diskette in a format acceptable to the Commissioner.
2. You must assure that the Schedule includes, at a minimum:
 - a. Project name, Contract number, Contractor's name, start date and plot date on each separate sheet. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included in them.
 - b. The order and interdependency of activities, indicating the sequence in which you plan to perform the Work; the Schedule must describe and indicate the critical path; and
 - c. Estimates of man hours and/or crew sizes for each activity.
 - d. The dates for:
 - (1) starting and completing the various stages of the Work, including milestones identified by the City in the Contract;
 - (2) placing material orders, fabrication and delivery of materials and equipment;
 - (3) preparation, submittal and approval of all required submittals to the City;
 - (4) procuring material and equipment furnished by the City;
 - (5) interface activities performed by other contractors or Subcontractors upon which your Schedule depends;
 - (6) all Work activities and field construction operations;

- (7) equipment installation, testing and balancing.
3. For purposes of the Schedule, "activity" means each logically separate part of the Work defined by an observable start and an observable finish, subject to the following:
 - a. To establish the scope of an activity for Schedule purposes, you must form a single activity from the largest grouping of related operations that permit a continuous and measurable flow of Work;
 - b. The scope of an activity must be small enough to permit a reasonable appraisal of its status or as directed by the Commissioner;
 - c. Each activity on the Schedule must be manpower loaded;
 - d. The activities must be defined so that the average activity has a value of approximately \$25,000, with no activity exceeding \$200,000 without the consent of the Commissioner; and
 - e. Activities of other contractors or companies that must be completed before the start of your Work or portion of Work must be included in the Schedule as milestones and identified with a designation approved by the Commissioner.
 4. You must furnish the following information on the Schedule for each activity:
 - a. Activity numbers assigned to the related portions of Work in the format of the project specification division and section numbers. You must submit the activity numbers to the Commissioner for review and approval;
 - b. A description of the activity that is sufficiently detailed to permit an evaluation of your performance of the Work described;
 - c. Duration of the activity in days, unless otherwise noted;
 - d. Responsibility code for each activity that is not performed by you, indicating which Subcontractor, supplier, fabricator, or other contractor is to perform the activity;
 - e. Each activity must be identified with early/late start, early/late finish, and total float;
 - f. A breakdown by monthly node of dollar amount and percentage of Contract Price.
 5. In addition to the above, any activity whose start or finish dates has been specified elsewhere in the Contract must be shown as the specified dates in the Schedule.
 6. The following information must be furnished on the Schedule as summary items:
 - a. The projected total percentage complete, on a monthly basis;
 - b. Anticipated total partial payments, on a monthly basis, including Subcontractor payment breakdown; and
 - c. The projected total manpower requirements, on a weekly basis.

- d. Within 14 days after receipt of the detailed Schedule and supporting documents, the Commissioner will either approve the Schedule or reject it with written comments. If the Schedule is rejected, you must submit a revised Schedule within seven calendar days of the date of rejection. The Commissioner's decision to reject the Schedule is final and you may not dispute it under Article XX of the Contract.
 - e. You must provide prompt written notice to the Commissioner of any events or other changes that may delay or accelerate the Schedule.
 - f. If you fail to provide the Schedule within the time prescribed and/or updates within the stated time frames, it is an event of default under the Contract, and the Commissioner may, in addition to any other remedies available to the City, withhold monthly partial payments until such time as you submit the required information.
7. Changes to the Schedule
- a. If you propose to make any changes to the Schedule, you must provide the Commissioner notice of the proposed changes, in writing, stating the reasons for the change, identifying each changed activity (including durations and interrelationships between activities) and providing a diskette of the proposed changed Schedule.
 - b. The originally approved Schedule will be the Baseline Schedule. The Commissioner, in his sole discretion, may approve or disapprove the proposed change in the Schedule to the extent that the change does not extend the Contract Time. He will provide a decision in writing to you within 10 days of receipt of your submission. All monthly updates must be plotted against the current revision of the Baseline Schedule.
 - c. If the Commissioner approves the change to the CPM Schedule you must submit a revised Schedule incorporating the change(s) within 10 days after approval along with a written description of the change(s) to the Schedule.
 - d. Any proposed change that would result in an extension of Contract Time requires a written modification of the Contract pursuant to Section XXIII.B, "Modifications," of the Contract.
8. Updating. The originally approved CPM will be designated as the Baseline Schedule and will only be changed based on a Contract Modification that extends the Contract duration.
- a. All updates will be plotted against the Baseline Schedule. You must update the CPM Schedule on a monthly basis coincident with the submission of the pay estimate. The updated information must include the Baseline Schedule detail and the following additional information for each activity:
 - (1) Actual start dates;
 - (2) Actual finish dates;

- (3) Actual activity percent complete;
 - (4) Remaining duration of activities in progress; and
 - (5) Critical activities must be identified or highlighted.
 - b. The updated information must include the Baseline Schedule detail and the following additional information for each summary item:
 - (1) Actual monthly and total-to-date Work percentage complete.
 - (2) Actual monthly partial payments, including Subcontractor partial payments; and
 - (3) Actual weekly and total-to-date manpower utilization.
 - c. The City may withhold partial payments if you do not submit updates as required.
9. Neither an update nor Schedule change may, in itself, extend the term of this Contract. The term of the Contract may only be extended by a written Contract Modification executed pursuant to Section XXIII.B, "Modifications," of the Contract.
10. Narrative Report. As part of the CPM Schedule update, you must prepare a written narrative report, highlighting the progress during the past update period. This written report must include the following information:
 - a. Summary of Work accomplished during the past update period;
 - b. Contract milestone comparison chart;
 - c. Analysis of critical path(s);
 - d. Analysis of time lost/gained during the update period;
 - e. Identification of problem areas; and
 - f. Recommended solutions to current problems.
11. You are required to attend a monthly CPM Schedule review meeting where the Schedule will be reviewed with the Commissioner. The purpose of this meeting is to review past progress, current status, problem areas and future progress. Your narrative report is reviewed at this meeting. Your representatives attending this meeting must have the authority to commit manpower and/or other resources to correct any negative impact to the Schedule. Any possible means of shortening the Schedule at no additional cost will be brought to the attention of the Commissioner. The Updated Progress Schedule will be used as a guide for verifying estimates of work completed for which payment is requested, and must accurately represent the project's current status. None of the information provided in this Section constitutes a request for a time extension.

E. Recovery Schedule

1. You must maintain an adequate work force and the necessary materials, supplies and equipment to meet the current approved Schedule. If you, in the sole opinion of the Commissioner, are failing to meet the approved Schedule, including any Contract

milestones, you must submit a recovery Schedule (the "CPM Recovery Schedule"). The CPM Recovery Schedule sets forth a plan to eliminate the schedule slippage (negative float). The plan must be specific and show the methods to achieve the recovery of time, e.g., increasing manpower, working overtime, weekend work, employing multiple shifts. You must bear all costs associated with implementing the CPM Recovery Schedule.

2. Upon receipt of the CPM Recovery Schedule, the Commissioner will review it for conformance with the Contract and degree of detail. The Commissioner, within 14 days after receipt of the CPM Recovery Schedule and supporting documents will approve it or reject it with written comments. If the detailed CPM Recovery Schedule is rejected, you must submit a revised CPM Recovery Schedule within seven calendar days after the date of rejection. The Commissioner's decision to reject the CPM Recovery Schedule is final and you may not dispute it.
3. If you refuse to follow the direction of the Commissioner, the Commissioner reserves the right after seven days written notice to you, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it and charge the cost to you. The Commissioner's rights under this provision are cumulative to rights under any other provisions of the Contract including the City's rights to terminate for default or to early termination.

F. Time for Completing Punch List

1. TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK, and you must begin work immediately after receipt of a list of minor miscellaneous or finishing work known as "Punch List Work." Your failure or that of your Subcontractors to begin the Punch List work within three days of receipt of the Punch List is an event of default.
2. You must diligently prosecute the Punch List work once begun and complete it within 30 days from receipt of the Punch List. If you fail to complete Punch List work within the 30 day time period, you must pay the liquidated damages set forth for "Punch List Work" in Book 2.
3. If liquidated damages are assessed, they will be added to the previously determined liquidated damages assessed as of the Substantial Completion Date or the City's beneficial occupancy of the Project, whichever occurs earlier. The City's takeover of the Project under Section XXI.C.3.b., however, does not constitute beneficial occupancy for purposes of liquidated damages.

G. No Damages for Delay; Extensions of Time

1. Should you be delayed in starting, prosecuting or completing the Work by any act of the City, including a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the City, or by order of the City, or anyone employed by or acting on behalf of the City, or by any cause beyond your control, none of which are due to any fault, neglect, act or omission on your part, then your relief is limited to an extension of the Contract Time that is no greater than the duration of any such delay. The extension of time releases and discharges the City, its employees, officials, agents and representatives from all claims for damages of whatever character, including any

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claims you may make on account of disruption, changes in sequence, interference, inefficiency, direct or indirect cost or any other causes of delay.

2. You must notify the Commissioner in writing of the cause within five calendar days after the delay begins. Consideration of a time extension for events beyond your reasonable control will be made if the delay directly impacts the Schedule for completion of the Work. Events considered to be beyond your reasonable control are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, freight embargoes, or weather significantly more severe than the norm, but only if the listed causes were not foreseeable and did not result from your fault or negligence and only if you took reasonable precautions to prevent delays owing to such causes.
3. Unless otherwise provided in the Contract, the Contract Time is based on normal weather conditions. An extension is granted for weather significantly more severe than the norm only if you demonstrate to the satisfaction of the City that any delay in the progress of the Work was due to such weather. The basis used to define normal weather will be the "normal" data as compiled by the United States Department of Commerce, National Oceanic and Atmospheric Administration in their most current report entitled "Local Climatological Data, Annual Summary with Comparative Data" for the month for which the time extension is sought. The effects of weather less severe than the norm may be taken into account in considering your requests for time extensions for the effects of more severe weather.
4. No extension of time will be granted under this Section for any delay if you, by your action or inaction, including your fault or negligence or that of your Subcontractors, caused the delay, or for which any remedies are provided under any other provision of the Contract.
5. The grant of an extension of time pursuant to this Section XI.G, "No Damages for Delay and Extension of Time," in no way constitutes a waiver by the City of any rights or remedies existing under this Contract, at law or in equity.
6. You must submit in writing any claim for extension of time to the Commissioner not more than five days after the delay begins, otherwise the claim is waived. Any claim for extension of time must (i) state the cause of the delay; (ii) specifically demonstrate the impact of the delay on the Schedule; and (iii) state the number of extension days requested. If the cause of the delay is continuing, only one claim is necessary, but you must report, in writing, the cessation of the cause for the delay within 10 days after the termination. Any claim for extension of time that does not comply with this provision constitutes a waiver by you of your rights to any such extension.
7. After receipt of a timely and properly completed request for a time extension, the City may (i) grant a time extension for the entire length of the delay; (ii) grant a time extension for a portion of the extent of the delay; or (iii) deny the time extension.
8. If you do not agree with the City's decision on a claim for time extension, you may appeal the ruling to the Chief Procurement Officer under Article XX, "Claims and Disputes," but only if you have complied with the notice requirements provided in these Terms and Conditions for Construction and the time extension request exceeds five

calendar days or the liquidated damages exceed \$10,000. The Commissioner's decision is final whenever the time extension request is for a duration of less than five days or the liquidated damages are less than \$10,000.

H. Suspension of Work

The Commissioner has authority to suspend the Work wholly, or in part, for such period of time as the Commissioner may deem necessary due to conditions unfavorable for the satisfactory prosecution of the work, or to conditions that, in the Commissioner's opinion, warrant the action or for such time as is necessary by reason of failure on your part to carry out orders given or to perform any or all provisions of the Contract. No additional compensation will be paid to you because of any costs caused by the suspension when the suspension is ordered for reasons resulting from any action or omission on your part or is related to utility adjustments, railroad work, work by other contractors on or near the Work covered by the Contract, or unforeseeable weather conditions.

I. Liquidated Damages

1. If the Work is delayed, you are liable for liquidated damages for every day you fail to achieve the Contract Completion Date (or any milestone completion date that provides for liquidated damages), but only if the delay is not the result of an excusable cause permitted under Section XI.G.2, "No Damages for Delay and Extensions of Time." The specific amount of liquidated damages for which you are liable is set forth in Book 2 of this Contract.
2. The City will recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due you. If the moneys are insufficient to cover the damages, then you or your surety must pay the amount due. Nothing contained in this Section is to be construed as limiting the right of the City to recover from you all amounts due or to become due, and all costs and expenses sustained by the City for improper performance under this Contract, repudiation of the Contract, failure to begin work on the date of commencement, or failure to perform the Work with adequate forces, equipment or materials or other resources, or breaches in any other respect, including defective workmanship or materials. In addition to liquidated damages for failure to meet any milestones, you are liable to the City for any other damages sustained as the result of your refusal or failure to perform the Work.
3. If the City permits you to continue to perform Work despite your failure to meet any milestone date set forth in the Contract, the action in no way constitutes a waiver by the City of any rights or remedies that exist under this Contract, at law, or in equity.

XII. MEETINGS

A. Pre-Construction Meeting

Before beginning Work, the Commissioner may conduct a Pre-Construction meeting. Your representatives and Subcontractors must attend. The purpose of the meeting is to establish lines of authority and communication and the identification of duties and responsibilities of the organizations. Discussion will cover specific contract plans, specifications, unusual conditions, schedules of completion, and other features of the Contract. The Commissioner may conduct additional coordination meetings at his discretion.

B. Weekly Review Meetings

The Commissioner may conduct weekly review meetings. At a minimum, your project manager and superintendent must attend. However, you must arrange for Subcontractors to attend the meetings if expressly requested by the Commissioner. The meetings may include the following:

1. Review of Work progress since the previous weekly review meeting;
2. Discussion of field observations, problems and decisions;
3. Review of off-site fabrication problems and other problems affecting in the Contract Time;
4. Review of equipment deliveries;
5. Discussion of corrective measures and procedures to achieve the CPM Schedule;
6. Review of submittal schedules and effect on the CPM Schedule;
7. Review of proposed Contract changes and effect on the construction schedule;
8. Coordination requirements;
9. Clarifications and decisions required of the Commissioner;
10. Review of your forces on the Work; and
11. Review of Project Record Document status and content.

C. Monthly Review Meetings

The Commissioner may conduct monthly review meetings. At a minimum, your project manager and superintendent must attend. However, you must arrange for Subcontractors to attend the meetings if expressly requested by the Commissioner. The meetings may include the following:

1. Review of Work progress since the previous monthly review meeting;
2. Discussion of field observations, problems and decisions;
3. Review of off-site fabrication problems and other problems affecting the CPM Schedule;

4. Review of equipment deliveries;
5. Discussion of corrective measures and procedures to achieve completion in the Contract Time;
6. Review of submittal schedules and effect on the CPM Schedule;
7. Review of proposed Contract changes and effect on the Schedule;
8. Coordination requirements;
9. Clarifications and decisions required of the Commissioner;
10. Review of your forces on the Work; and
11. Review of Project Record Document status and content.

XIII. PAYMENTS

A. Contract Price

The "Contract Price" is the total dollar amount of your bid accepted by the City, including approved change orders. It includes all labor, equipment, materials, permits, licenses, fees, and taxes necessary to perform the Work. In the case of a lump sum Contract Price or lump sum line item, you must provide the Commissioner with a breakdown that includes a schedule of costs for the various parts of the Work included in the lump sum. The total of these costs must equal the lump sum Contract Price or lump sum line items, as applicable.

The breakdown must be submitted in such form and detail, and supported as to correctness by such data, as the Commissioner may direct. The City will make no payment to you until you have submitted the breakdown and the Schedule required by Article XI, "Schedule," and the Commissioner has approved them. The breakdown may be used for verifying monthly progress payments upon substantiation of the costs detailed and the progress of the Work.

For unit price line items, measurement and payment is as specified in the Detailed Specifications.

B. Procedure for Monthly Payment Requests and Final Payment

1. You and the City will agree upon a payment schedule of at least once per month, or more frequently if appropriate or if specified elsewhere in the Contract. The Commissioner will process payment requests pursuant to that agreement if your payment requests, in the Commissioner's sole judgment, are acceptable in form and content, and if the Work for which payment is being requested has been completed according to the terms and conditions of this Contract. All payment requests are subject to correction by the Commissioner.
2. In cases where you proceed to perform and complete the Work properly under the Contract, progress payments will be processed on a monthly basis unless the amount earned is greater than \$1,000,000, then payments may be made twice a month. The payment period ends on the monthly anniversary date of the Notice to Proceed.

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3. Each monthly payment request must include one original and two copies of the following:
 - a. Certified Statement. You must submit certified statement(s) (signed by an authorized individual and notarized) for each payment request; the statement, in the form acceptable to the Commissioner, must list the following for you and for each Subcontractor and supplier for the period for which payment is requested:
 - (1) the name and business address of the particular Subcontractor or supplier;
 - (2) description of the work performed and/or product supplied;
 - (3) [intentionally omitted]
 - (4) the total amount of the particular subcontract;
 - (5) the amount previously paid to the Subcontractor and the dates paid;
 - (6) the amount of the monthly pay request you will pay to each individual Subcontractor and/or supplier from payments you receive on the request, and the dates those amounts were invoiced or requested by the Subcontractor or supplier;
 - (7) the balance remaining under the subcontract to complete the Work.
 - b. Partial Waivers of Lien to Date and Affidavit for Payment. Following your first payment request, you must submit Partial Waivers of Lien from all Subcontractors and suppliers that performed services and provided supplies during the month before your previous payment request. The Partial Waivers of Lien must be in a form acceptable to the City and must identify, at a minimum, the payment request number and time period covered. The Partial Wavier of Lien must be in dollar amount equal to the dollar amount of the services performed or supplies provided by the Subcontractor or supplier during the relevant time period. With every payment request, you must also submit an Affidavit for Payment from all Subcontractors and suppliers for whose services or supplies you request payment. The Affidavit for payment must be in a form acceptable to the Commissioner and identify, at a minimum, the payment estimate number, the time period covered, and the total amount invoiced by the Subcontractor or supplier, and the total amount paid to the Subcontractor or supplier to date; and
 - c. [Intentionally Omitted]
 - d. Certified Payrolls. You and all Subcontractors working on the job site must submit three copies of certified payrolls for the payment period to the Commissioner every week until all Work is completed. All payrolls must be identified with Contractor or Subcontractor's name, as appropriate, Contract name and be sequentially numbered. If there are periods of no Work by you or a Subcontractor, you must submit a payroll labeled "NO WORK." The final payroll must be clearly labeled "FINAL". Certified payrolls are required to assure EEO compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Chief Procurement Officer. An employee's address should appear every time

his or her name appears on the payroll. You must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a Payroll Summary Report in the form required by the Chief Procurement Officer. You and each Subcontractor must submit the EEO report forms required by the City and U.S. Department of Labor reflecting fully the periods of Work covered by the partial payment request. When directed, Contractor shall be required to submit payrolls electronically using the City's certified payroll and reporting system.

- e. In April 2004, the Chicago City Council passed an ordinance requiring the City to report payments to subcontractors and suppliers on the City 's website. This ordinance applies to all City-funded, construction-related contracts awarded after June 28, 2004. In order to comply with this new ordinance, contractors meeting these criteria will be required to declare subcontractor payments with each invoice submitted. This reports the intended payments from prime contractors to subcontractors and suppliers from the invoice. The Subcontractor Payment Certification Form can be downloaded from the City's website at www.cityofchicago.org/finance/subcontractorform. The information from this form will be recorded in the City's financial system and posted on the City website.

C. Payment for Stored Material

1. Whether stored on- or off-the job site, the risk of loss for stored material will remain with you, and you must insure the stored materials against the risk of loss, theft or damage until its installment in the Work.
2. Payment for material stored on the job site will be 100% of a valid invoice. No payment will be made for materials stored off the job site unless otherwise authorized by the Commissioner in accordance with Section XIII.C.3. If Materials stored on the job site cannot be incorporated in the finished Work within a reasonable period of time you may include them in the monthly progress payment, but only if the following documents are submitted with the request for payment:
 - a. Paid invoices showing the cost of material or equipment;
 - b. Waiver of lien from the supplier indicating that the cost of the material or equipment was paid; and
 - c. Inspection tickets showing that material or equipment had been inspected and accepted by the City.
3. Payment for material stored off-site, if authorized, will be 100% of a valid invoice when you have provided the Commissioner with the documents and assurances listed and complied with the requirements below:
 - a. A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs;
 - b. A waiver of lien from the supplier for the total amount of the material purchased;
 - c. Inspection for all of the material stored;

- d. A certified statement giving the exact location of the materials or equipment, stating that:
 - (1) you have inspected all of the material stored and that it is complete and in good condition;
 - (2) the materials are suitably stored and maintained at a bonded, secure and environmentally appropriate location that the Commissioner has agreed upon and subject to the conditions required or established by him;
 - (3) you have complied with procedures satisfactory to the Commissioner to establish the City's title to the materials or otherwise protect the City's interest in them, including, insurance, storage and transportation to the Project site for the materials stored off-site, as the Commissioner may reasonably require;
 - (4) the materials, equipment and associated fabricated components will not be diverted away from the Project;
 - (5) a certificate of insurance coverage for the stored material upon which payment is requested;
- e. Immediately upon receipt of payment for the material, you must prepare and execute all documents required to transfer title to the City, including, any Uniform Commercial Code documentation necessary to perfect transfer of title; and
- f. All material and Work covered by payments will thereupon become the sole property of the City, subject to your obligation to insure it until Acceptance of the Work.

D. Retainage

Pursuant to § 2-92-250 of the Municipal Code, specifically paragraph A.1., the Chief Procurement Officer in consultation with the Chicago Department of Transportation has made a finding that holding retainage for this contract is not in the best interest of the City.

E. Payments Withheld

- 1. The Commissioner may decline a request for payment if, in the Commissioner's sole opinion, the request for payment is not adequately supported. If you and the Commissioner cannot agree on a revised amount, the Commissioner must process the payment in the amount he deems appropriate.
- 2. The Commissioner may decline to process any payment or may rescind in whole or in part any approval previously made to the extent that may be necessary in his sole opinion because of any failure to perform any obligation under the Contract, including:
 - a. Failure or refusal to provide the City the required initial schedule for the Work or monthly schedule updates and obtain the City's approval for either or both;
 - b. Your failure to remedy defective Work;
 - c. Your failure to make payments to Subcontractors, or employees, or provide partial waivers of lien;

- d. Your failure to maintain timely progress of the Work as stated in your schedule, or the City's determination that the Work will not be completed within the Contract Time, or your failure to carry out the Work in accordance with the Contract;
 - e. Failure to follow the City, State, Federal, or Contract safety and security requirements;
 - f. Failure to maintain insurance policies as required by the Contract and/or to provide to the Commissioner each evidence of insurance coverage, in the form of current certificates of insurance, as he or she may require;
 - g. Failure to comply with other requirements as referenced in the Contract;
 - h. Failure to provide certified payrolls or other documents required under Section XI.G, "No Damages for Delay and Extensions of Time."
 - i. Failure to provide material inspections as required by the Contract; and
 - j. Failure to provide contract deliverables such as, accurate Record Drawings, warranties, guarantees, manuals, etc.
3. Pursuant to § 2-92-270 of the Municipal Code, the Chief Procurement Officer may, in his sole discretion, direct that no further payments be made, or vouchers or estimates issued to you, if he determines that you have failed to pay any Subcontractor, employee or worker for Work performed under this Contract. The City may withhold payment until you demonstrate, to the satisfaction of the Chief Procurement Officer, that payments to the Subcontractors, employees or workers have been made in full.

If the Chief Procurement Officer gives you notice under Section XXIII.H that no further vouchers or estimates will be issued or payments made on the Contract until the Subcontractors, workers, and employees have been paid, and you neglect or refuse for a period of 10 days or more after notice was given to pay those Subcontractors, workers or employees, the Chief Procurement Officer may apply any money due, or that may become due, under the Contract to the payment of those Subcontractors, workers or employees without further notice to you and the effect will be the same, for purposes of payment to you of the Contract Price, as if the City had paid you directly.

The failure of the City, however, to retain and apply any money, or of the Chief Procurement Officer to order or direct that no vouchers or estimates be issued or further payments made, will not, nor will the paying over of the reserved percentage without the Subcontractor, workers, or employees being first paid, in any way affect your liability or that of your sureties to the City, or to any such Subcontractor, worker or employee upon any bond given in connection with this Contract.

4. Debts; Outstanding Parking Violation Complaints

In accordance with § 2-92-380 of the Municipal Code, and as otherwise permitted by law, in addition to any other rights and remedies (including any set-off) available to the City under the Contract or permitted at law or in equity, the City is 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 provision, the terms "outstanding parking violation complaints" and "debt" are defined in the Municipal Code as are the conditions under which no set-off will be made.

5. Provisions Relating to Liens

Contractor will notify Subcontractors that no mechanic's lien under the Illinois Mechanics' Lien Act, 770 ILCS 60/23, *et seq.*, will be permitted to arise, be filed, or maintained against public funds, the Project, or any part of it, or any interest in them, or any improvements on them, or against any monies due or to become due to Contractor on account of any work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Project to the extent permitted by law. Contractor, for itself and its Subcontractors, expressly waives, releases, and relinquishes such liens and all rights to file or maintain such liens; and Contractor further covenants that this waiver of liens and waiver of the rights to file or maintain such liens is an independent covenant.

If any of Subcontractors, employees, officials, agents, or any other person directly or indirectly acting for, through, or on their behalf files or maintains a lien or claim under the Illinois Mechanic's Lien Act, 770 ILCS 60/23, *et seq.*, against public funds or against any monies due or to become due to Contractor on account of any Work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Project, Contractor must cause such liens and claims to be satisfied, removed, or discharged within 30 days from the date of filing. The City may extend the 30 day period if (i) the City determines that the lien claim cannot be so satisfied, removed, or discharged in such period and (ii) Contractor, in the City's sole determination, is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged. The City has the right, in addition to all other rights and remedies provided under this Contract or by law, to cause such liens or claims to be satisfied, removed, or discharged by any means at Contractor's sole cost, such cost to include reasonable legal fees.

6. The City's rights under this Section XIII.E, "Payments Withheld," are cumulative with any other rights provided for under this Contract. Failure by the City to exercise any such right afforded in this Contract, or at law or in equity, will not constitute a waiver of that right.

F. Prompt Payment to Subcontractors

1. Payment Within Seven Days. The Contractor must make payment to its Subcontractors within 7 days of receipt of payment from the City for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with the Contract Documents and provided the Contractor with all of the documents and information required of the Contractor. The Contractor may delay or postpone payment for a to a Subcontractor when the Subcontractor's work or materials do not comply with the requirements of the Contract Documents, the Contractor is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

2. 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. 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.](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_Promptly_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.

4. Action by the City. Upon receipt of an electronic 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

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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
Fifth and Each Succeeding Unexcused Report:	\$1,000

The liquidated damages set forth above shall be assessed per unexcused report per contract, i.e., each successive report regarding a contractor's failure to pay under this Contract will be assessed liquidated damages, regardless of which subcontractor files the unexcused report(s).

By executing this Agreement, Contractor acknowledges and agrees that the City may collect such damages by deducting any amount due to the City from the next payment to be made to the Contractor. In the event that no further payments are due to Contractor, Contractor agrees to promptly pay such liquidated damages as it may owe to the City. Failure to make such payment within thirty (30) days of receipt of notice of the assessment of liquidated damages may result in Contractor being debarred from participating in City contracts for a period of not less than one year.

Contractors are reminded that each unexcused failure to pay promptly is an event of default under the Contract and, in addition to the liquidated damages provided for in this Section, is subject to the remedies found in Section XX.C of this Contract. Contractors are further reminded that per Section 2-92-270 of the Municipal Code of Chicago, failure to pay subcontractors as required by law and the Contract may result in the City suspending payments to Contractor and making direct payments to such subcontractors. Any such direct payments shall be from funds due and owing to the contractor.

5. Whistleblower Protection. Contractor shall not take any retaliatory action against any subcontractor for reporting non-payment pursuant to this Section F. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth in Section XX.C 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.

6. If the Chief Procurement Officer determines that the circumstances pertaining to a contractor's failure to pay promptly warrant excusing such non-performance, or determines that excusing such non-performance is in the best interests of the City, the Chief Procurement Officer may waive any of the remedies provided in this Section F. Each such

waiver is discrete, non-precedential and does not constitute a waiver of any subsequent remedies against a contractor who fails to comply with the terms and conditions set forth herein.

G. Payment for Changes

1. **Payment for Changes.** The amount to be paid by the City for changes (additions, deletions or revisions) in the Work or directions to change the Contract Time, will be made in accordance with Sections XIII.G.1.a through XIII.G.1.f below.
 - a. **Unit Price Basis.** Should the changes in the plans result in an increase or decrease in the quantities of unit priced Work to be performed, you will accept payment as follows:
 - (1) All increases in the Work of the type that appears in the Contract as unit price items will, except as provided in Section XIII.G.1.b., "Proposal Basis," be paid for at the Contract unit bid prices. Decreases in quantities included in the Contract will be deducted from the Contract value at the unit bid prices. No allowances will be made for delays or anticipated profits.
 - (2) Quantities in excess of 125% of the bid quantities, when the total dollar value of the unit price item exceeds 5% of the original Contract bid amount, will be paid for at a negotiated unit price based on costs that are demonstrated by you and agreed to by the Commissioner, subject to the approval of the Chief Procurement Officer. The negotiated unit price can be higher or lower than the Bid Unit Price. Quantities in excess of 125% of the bid quantities, when the total dollar value on any unit price item does not exceed 5% of the total value of the original Contract bid amount, will be paid at the bid unit price.
 - (3) Quantities below 75% of the bid quantities, when the total value of the unit price item exceeds 5% of the Contract Price at the time of bid, will be paid for at a negotiated unit price based on costs which are demonstrated by you and agreed to by the Commissioner, subject to the approval of the Chief Procurement Officer. The negotiated unit price can be higher or lower than the Bid Unit Price. Quantities below 75% of the bid quantities, when the total value on any unit price item does not exceed 5% of the total value of the Contract Price at the time of bid will be paid at the bid unit price.
 - (4) If the Commissioner and you are unable to agree on a negotiated unit price, the Commissioner will determine a unit price, prepare a Contract Modification with the Work so priced, that you will sign. You may, however, timely dispute the amount of the unit price to the Chief Procurement Officer under Article XX, "Claims and Disputes." This is the only Contract Modification in which the release language required by Section XIV.D, "Contractor's Release," will not be included.
 - b. **Proposal Basis.** If there are no unit prices for the changed Work, the payment may be based upon a price agreed to by the City and you. The proposal submitted will be a starting point for negotiation between the City and you. You must submit any

proposal for consideration for changed Work in writing, breaking down the Work to be done into segments of cost as follows:

- (1) Labor. For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence. You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work. An amount not to exceed 30% of XIII.G.1.a.(1) above and an amount not to exceed 10% of XIII.G.1.a.(2) above will also be paid to you.
- (2) Insurance and Payroll Taxes. Cost for property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions and social security taxes on the extra Work, to which an amount not to exceed 10% of the cost of these items will be added. You must furnish satisfactory evidence of the rates paid for the insurance and taxes.
- (3) Materials. For materials accepted by the Commissioner and used as an integral part of finished Work, you will receive the actual costs of the materials delivered on the job site, including transportation charges that you paid (exclusive of machinery rentals as set forth below), as shown by original receipted bills, to which 15% will be added to the first \$10,000.00 and 10% for any amounts over \$10,000.00.
- (4) Equipment. Number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Schedule of Average Equipment Ownership Expense With Operating Cost" as issued by IDOT, or in the AED Compilation of Rental Rates if equipment is to be rented, for the period that the machinery and equipment are to be used on the Work, to which no percent will be added. Where machinery and equipment are not listed in these schedules, then the rates will be determined by the Commissioner after reviewing all of your available records or other information concerning the expense of operating that type of equipment.
- (5) Cost for Increase in Performance and Payment Bond. You will furnish the Commissioner written documentation from the surety of the rate or rates applicable for additional bonding for this Contract. These rates will be applied to all the changes increasing or decreasing the Contract Price. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the surety, a percentage of the total change, as determined by the Commissioner, will be added or subtracted to cover the increase or decrease of the cost of the bond.
- (6) When Work is to be performed by a Subcontractor, the proposal may include as administrative costs for you an amount not to exceed 5% of the first \$10,000.00 and 1% of any amount over \$10,000.00 of the total approved costs of the Work. The Subcontractor, however, is not allowed any additional markup if it sublets its

Work. The use of a Subcontractor requires the approval of the Chief Procurement Officer. All subcontracted costs must be supported by proposals from the Subcontractors performing the Work. The Contractor's Subcontractor's proposal must be broken down into its various parts of Work as described in items XIII.G.1.b.(1) through XIII.G.1.b.(4) above, or as required by the Commissioner.

- c. **Time and Material Basis.** If the Commissioner and you cannot agree on a price based on a proposal, the Work will be paid for on a time and material basis. Work that is done on a time and material basis will be paid for as follows:
- (1) Labor. For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence.
 - (2) You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work.
 - (3) An amount not to exceed 30% of XIII.G.1.c.(1) above and an amount not to exceed 10% of XIII.G.1.c.(2) above will also be paid to you.
 - (4) No payment will be made for labor performed on a time and material basis until you have furnished the Commissioner with itemized statements of the labor cost as follows.
 - (a) Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
 - (b) Certified payrolls or certified copies of them, pertinent to the Work for which payment is requested. The payroll records will contain the name, address and social security number of each employee, the employees correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. The time and material bills will be audited and corrected against the certified payrolls. Falsification of the certified payroll is an offense punishable by law.
 - (5) Insurance and Payroll Tax. For property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions and social security taxes on the time and material Work, you will receive the actual costs, to which 10% will be added. No payment will be made for insurance and payroll taxes until you have furnished satisfactory evidence of the rate or rates paid for the insurance and tax.
 - (6) Materials. For materials accepted by the Commissioner and used as an integral part of finished Work, you will receive the actual costs of the materials delivered on the job site, including transportation charges paid by him (exclusive of machinery rentals as set forth below), as shown by original receipted bills, to

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which 15% will be added to the first \$10,000.00 and 10% for any amounts over \$10,000.00.

- (7) You will be reimbursed for any materials used in the construction of the Work, such as sheeting, falsework, form lumber, burlap, or other materials for curing, etc., that are not integral part of the finished Work. The amount of reimbursement will be agreed upon in writing before the Work is begun and no percent will be added. The salvage value of the materials will be taken into consideration in the reimbursement agreed upon.
- (8) No payment will be made for material cost until you have furnished itemized statements of the material costs, which must include:
 - (a) Quantities of materials, prices, and extension;
 - (b) Material transportation costs supported by receipted invoices; and
 - (c) Receipted invoices for all materials used. However, if materials used on the time and material Work are not specifically purchased for the Work but are taken from your stock, then in lieu of the invoices, you will furnish an affidavit certifying that the materials were from your stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to you. The price quoted for the material must be reasonable and acceptable as per the normal industry practice.
- (9) Equipment. You will be paid for all machinery and equipment (other than small tools as currently defined by the Illinois Department of Transportation) used on the Work in accordance with the latest revision of "Schedule of Average Annual Equipment Ownership Expense with Operating Cost," as issued by the Illinois Department of Transportation, for the period that the machinery and equipment are in use on the Work, to which no percent will be added. Where machinery and equipment are not listed in this schedule, the rates will be determined by the Commissioner after reviewing all your available records or other information concerning the expense of operating that type of equipment. Where idle time for equipment is authorized by the Commissioner, it will be paid at a rate not to exceed 50% of the rates described above.
- (10) When equipment is rented, you will receive actual rental cost as shown by original receipted bills to which 5% will be added.
- (11) No payment will be made for equipment unless designations, dates, daily hours, rental rates, and extensions for each unit of machinery and equipment are shown on the itemized statement of time and material Work.
- (12) Bond. The City will pay you the actual increase in cost of your performance bond. You will furnish from the bonding company written documentation of the rate or rates applicable for additional bonding for this Contract. These rate/rates will be applied to all the changes increasing or decreasing the Contract value. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the bonding company, a percentage of the total change, as determined by the Commissioner,

will be added or subtracted to cover the increase or decrease of the cost of the bond.

- (13) When Work is performed by Subcontractor, you will receive as administrative costs an amount equal to 10% of the first \$10,000 and 5% of any amount over \$10,000 of the total approved costs of the Work. The Subcontractor, however, is not allowed any additional markup if it sublets its Work. The use of a Subcontractor will require the approval of the Chief Procurement Officer. All subcontracted costs must be supported by invoices from the Subcontractors performing the Work. The Subcontractors' invoices must be submitted in the form described in items (1) through (4) above.
- (14) Documentation. For additional Work performed on a time and material basis you will each day submit to the Commissioner detailed and complete records of the labor, material, equipment, and other costs relating to any force account Work performed on the day the Work is performed. You and the Commissioner will sign these daily extra Work reports.
- (15) Base Contract Work on a Premium Time Basis.
 - (a) For Contract Work performed outside of regularly schedule working hours as defined by the Contract, premium time costs will be paid, only if expressly directed in writing by the Commissioner before you begin the Work. Compensation, when authorized, will cover only the direct cost of the premium portion of the time involved and will be without any charge for insurance. No payment will be made for union fringe benefits on the premium portion of the time unless expressly required by union agreement. Taxes that are attributed to the premium portion of the time will be paid. If you seek to charge taxes, the Commissioner may require you to supply verification that the employees' Social Security Tax, Federal Unemployment Tax, and State Unemployment Tax limits have not been exceeded.
 - (b) An amount equal to 7% of the sum of the premium portion of the work plus taxes will also be paid to you to cover job site general conditions, overhead, and profit. All indirect costs are considered part of the overhead, including supervision, engineering, and other technical personnel.
 - (c) If you enter into a subcontract, you will be allowed an additional 2% of the Contractor's Subcontractor's premium time billing to cover your supervisory and related expense on subcontract operations. The Subcontractor is not allowed the additional 2% if it sublets its Work.
 - (d) You must keep Daily Work Reports for the premium time hours signed by you and the Commissioner. The reports must indicate the time of day when the Work was performed and wage rate differential that will be charged. Billings must reflect hours reported on Daily Work Reports.
- d. **Changes on Lump Sum Contracts or Lump Sum Items in Unit Priced Contracts.** All increases or decreases in the Work that is listed in the approved schedule of values will be priced, for the purpose of any change, based on the amounts stated for the Work in the approved schedule of values.

- e. **All invoices for changed work.** You must submit all invoices for changed work within 45 days following completion of the changed work. Failure to provide a complete invoice for the changed work within that period, will authorize the Commissioner, subject to the approval of the Chief Procurement Officer, to determine the final amount for the Contract Modification that may be awarded without your signature.
- f. **Miscellaneous.**
 - (1) For the purposes of this Section, any business entity which employs field labor and performs Contract Work on the job site is defined as a Subcontractor.” (This definition excludes suppliers/deliverers of materials.)
 - (2) When the extra Work involves only supply of material without any field labor at the job site, the supplier, for the purposes of this Section, will be considered a “Materials Subcontractor” and the mark up specified in Section XIII.G.1.c (6), “Materials,” will apply.
 - (3) Expenses incurred by the City. Upon written request of the Commissioner, you will pay the costs related to the Work that are the responsibility of the City. You will be reimbursed for the actual amount paid out to which will be added a markup as specified in Section XIII.G.1.c above.

2. Change Claims:

- a. If you and Commissioner are unable to agree on the price and/or time extension in connection with a change, you must, within 15 days of completing the changed work, provide written notice to the Commissioner of the amount of money and/or time extension sought by you and the Contractual and factual basis for each. You will designate the document Notice of Claim.
- b. The Commissioner will, within 30 days from receipt of the Notice of Claim, respond by requesting a meeting with you, making a written request for additional information from you, including a general statement of the basis for the claim, the facts underlying the claim, the notice to the Commissioner of the change that gave rise to the claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the claim; taking other action to attempt to resolve the Notice of Claim, and/or advising you in writing that it should file a claim under Article XIX, “Claims and Disputes.” Any steps taken by the Commissioner to resolve the Notice of Claim will not exceed 60 days from receipt of the Notice of Claim unless you agree to an additional amount of time in writing.
- c. If the Notice of Claim cannot be resolved as provided for in Section XIII.G.2, you must follow the requirements of Sections XX.B and C, “Claims” and “Disputes.”
- d. If you do not agree with the adjustment for time and/or money proposed by the Commissioner, you must follow the procedures set out by the Contract to file a claim and/or dispute as provided in Article XX, Failure to follow the procedures set out by the Contract to file a claim and/or dispute as provided in Article XX, constitutes a waiver of the right to make a claim or file a Dispute to the Chief Procurement Officer. In the event of your waiver, you may file a Dispute under Section XX with the Chief

Procurement Officer seeking a final decision as to the adjustment for the changed work.

H. Night, Sunday and Holiday Work

Whenever you are permitted to perform Work at night, or on Sundays or State or Federal holidays, or to vary the period of hours during which any work is carried on each day, you must give written notice to the Commissioner, at least 24 hours in advance, so that proper inspection may be provided. The Work will be done under regulations to be furnished in writing by the Commissioner, and no extra compensation will be allowed therefore.

I. Acceleration

1. If progress falls behind the approved schedule, the Commissioner may direct and authorize you, in writing, to perform premium time work as indicated in TIME OF COMPLETION in the Proposal section of the specifications. No additional compensation will be paid for such premium time work and the cost incurred for inspection and testing during the premium time work will be considered as “extra” inspection, and reimbursement will be provided by you as described in Section XV.C, “Materials and Equipment Testing and Inspection.”
2. If conditions are encountered where you are specifically directed and authorized in writing by the Commissioner to perform premium time work, on the original contract, to advance an already established completion date of an event or the project, or project milestone, you will be compensated in accordance with Section XIII.G.c (15).
3. When the premium time Work is performed by approved subcontractor, you will receive a markup as specified in Section XIII.G.c (15). of the Contract.

J. Payroll Canvass Reports

[This section deliberately omitted]

K. 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 catalogs, purchase orders, releases, and invoices. Contractor will accept electronic purchase orders and releases upon request of the Chief Procurement Officer. Contractor will provide the City electronic catalogs, copies of invoices and other electronic documents upon request. 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 Chief Procurement Officer 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 Chief Procurement Officer, 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 Chief Procurement Officer 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.

XIV. CHANGES IN THE WORK

A. City's Right to Change Work

The Chief Procurement Officer and the Commissioner reserve the right to jointly order, in writing, changes in the Work or the Contract Time without prior notice to your surety. You are obligated to perform in a timely manner the changed Work included in the written notice from the Chief Procurement Officer and Commissioner. These changes may consist of additions, deletions, or other revisions, at the discretion of the City. You must begin the changed work upon receipt of a Field Order, signed by the Commissioner, with the prior written approval of the Chief Procurement Officer, unilaterally directing changes in the Work or Contract Time.

B. Contractor's Request

Within 14 days of receipt of the written notice from the Commissioner, you must submit to the Commissioner a written request for adjustment to the Contract Price and/or Contract Time for the revised Work.

C. Contract Modification

The final provisions of the Proposed Contract Modification, including the adjustment in the Contract Sum and/or the Contract time, if any, will be incorporated into a written Contract Modification signed by the City and you.

D. Contractor's Release

All Contract Modifications constitute a full release of the City from any liability for any additional compensation or extension of time arising or resulting from the Work performed pursuant to the Contract Modification. By executing a Contract Modification, you accept the compensation and/or time extension provided in it in full accord and satisfaction for that Contract Modification, and you expressly waive, release and relinquish all additional claims and demands relating to or arising out of the matters covered by that Contract Modification, including direct or indirect cost, profit, or damages related to disruptions.

E. Performance of Changed Work

You must promptly proceed with any changes in the Work or Contract Time as directed by a written order of the Commissioner ("Field Order"), in accordance with Section XIV.A., "City's Right to Change Work," with or without any Contract Modification. Your refusal or failure to proceed promptly with the changed Work as directed constitutes an event of default under the Contract. No change to the Work by you as directed by the Commissioner will operate to invalidate the Contract or release your surety.

F. Change Claims and Disputes

If you and Commissioner are unable to agree on the price and/or time extension in connection with a change, the procedures set forth in Article XX, "Claims and Disputes," will govern.

XV. TESTING & INSPECTION

A. Material, Inspection and Responsibility

The City has the right to inspect all materials, equipment and each part or detail of Work, at any time, to be used in carrying out this Contract. The City does not assume any responsibility for the availability of any materials or equipment required under this Contract. You are responsible for all materials, components and completed Work furnished under this Contract. The City may reject materials, components or completed Work not complying with the terms and provisions of this Contract and you must replace it or them at no additional cost to the City. You must promptly remove any rejected materials or components rejected from the City's premises at no additional cost to the City after you receive notice from the City that the materials or components have been rejected.

B. Inspection of the Work

1. All materials and equipment and each part or detail of the Work are subject at all times to inspection by the Commissioner or the Commissioner's authorized representatives. You are held strictly to the requirements of the Contract with respect to quality of materials, workmanship and the diligent execution of the Contract. Inspection may include mill, plant, shop and field inspection of any material or equipment furnished and any installation and construction under the Contract. You must allow the Commissioner and his representatives access to all parts of the Work and furnish such information and assistance as may be required to make a complete and detailed inspection.
2. All tests performed by or at the direction of the Commissioner under this Contract are to verify that the materials you are providing meet the Contract requirements. You, at your own expense, may perform or have others perform similar tests for the purpose of maintaining the quality of the material being provided. Payment will not be made for uninspected or unauthorized use of materials incorporated into the Work.
3. You must remove or uncover such portions of the finished Work as the Commissioner may direct before acceptance. After the examination, you must restore the portion of the Work to the standard required by the Contract. If the Work thus exposed or examined proves acceptable, the City will pay the expenses of uncovering, removing and/or replacing the parts as extra work, but if the Work so exposed or examined is unacceptable, you must bear the expense of uncovering, removing and/or replacing of it in accordance with the Contract.
4. Except as may be otherwise specified in other sections of the Contract, the Commissioner will make final inspection of all Work included in the Contract as soon as possible after you notify him that the Work is substantially completed and ready for acceptance. If the Work is not acceptable to the Commissioner at the time of the

inspection, he or she will inform you as to the particular defects to be remedied before the Work is accepted as substantially complete.

C. Materials and Equipment Testing and Inspection

1. You must provide the Commissioner sufficient notice of placing orders to permit tests to be completed before the materials are incorporated into the Work. You must afford such facilities as the Commissioner may require for collecting and forwarding Samples and making inspections and test. All Samples must be furnished without charge to the Commissioner. You must not make use of or incorporate into the Work the materials represented by the Samples until tests have been made and the materials have been found to be in accordance with the requirements of the Contract.
2. For materials that are integral parts of machinery or equipment or of parts of equipment that you or your Subcontractor normally stock, you must furnish the original and one copy of certified tests made at the time of production. You will keep the original and the Commissioner will retain the copy.
3. You must assure that the Commissioner has free entry, at all times while Work is being performed, to all parts of the manufacturer's works that concern the manufacture of the material or equipment ordered. The Commissioner must be permitted to examine all components and subassemblies. Assemblies and parts must be numbered for identification. You must provide the Commissioner with a detailed production schedule before the first inspection. After review of the schedule, the Commissioner will inform you of the methods, extent of inspection, facilities desired and date of inspection. You will afford the Commissioner without charge, all facilities necessary to determine that the material or equipment furnished are in accordance with the Contract. Test and inspection may be at the place of manufacture before shipment.
4. If for any reason, the City elects not to make the tests, the Commissioner may direct you to make the necessary tests. You must furnish a certification of the ordered tests after completion. The Commissioner reserves the right to inspect and reject all materials or equipment that were previously inspected and accepted at the place of manufacture or source of supply, after they were delivered to the Work site, if the materials or equipment do not meet the requirements of the Contract.
5. When an inspection trip is terminated due to insufficient materials, unacceptable quality, Contractor labor problems, or Contractor equipment problems, you must pay the City its costs for any additional inspection trip.
6. The Contract documents may require you to include the cost of travel and living expenses for a specific number of City employees and/or other persons for a specific test. The manufacturer or you must furnish a certification of the ordered tests after completion. The Commissioner reserves the right to reinspect and reject all materials or equipment that have been previously inspected and accepted at the place of manufacture or source of supply, after they have been delivered to the site if the materials or equipment do not meet the requirements of the Contract.
7. Unless otherwise provided, all materials will be sampled and tested in accordance with the latest published standards and methods of the American Society for Testing and Materials (ASTM) and any revisions of them. If there are no ASTM standards that apply,

applicable standard methods of other recognized standardizing agencies will be used. You must provide the name and qualifications of any such standardizing agency to the Commissioner for review and approval.

D. Testing Laboratory Labels

You must submit all equipment containing electrical wiring to the City for acceptance before installation. All electrical components that you furnished and installed or assemble under this Contract must be approved and so labeled by one of the following Testing Laboratories:

1. Underwriters' Laboratories (UL)
2. Canadian Standards Association (CSA)
3. Electrical Testing Laboratory of New York (ETL)
4. Illinois Institute of Technology research Institute (IITRI)
5. American Gas Association (AGA)
6. Factory Mutual Research Corporation (FMRC)
7. Maintenance and Electrical Testing (MET)
8. American Research Lab (ARL)

Any electrical unit comprised of a number of components, assembled at the factory and considered custom made, must bear one of the above labels for the entire unit as well as for each component.

You must pay all costs in obtaining a testing laboratory label at no additional cost to the City. Any delays in completion of the Work caused by the manufacturer of equipment in obtaining the required testing laboratory labels and the City approval are not grounds for an extension of time beyond the time of completion indicated in the Contract.

XVI. CONTRACTOR PRACTICES AT SITE

A. Cooperation Among Contractors

You must conduct the Work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors within or adjacent to the Work site. You must assume all liability, financial or otherwise, in connection with this Contract, and must protect and save harmless the City from all damages or claims that may arise because of inconvenience, delay, or loss experienced due to the presence and operations of other contractors working within the limits of the Work. You must assume all responsibility for Work not completed or accepted due to the presence and operations of other contractors. You must coordinate and tie-in, where appropriate, your Work with that of others in an acceptable manner and perform the Work in proper sequence to the work of others. When other contractors cause any damage to the Work that you performed, you must file claims with the other contractors, and not against the City, and you must obtain compensation for damage directly from those other contractors.

B. Protection of Persons and Property

1. Protection of Existing Structures and Property. You must avoid causing damage to trees, plant life, sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the work of other contractors and the property of the City and others, and must, at your own expense, repair any damage that you or any Subcontractor may cause.

You are responsible for loss or damage by fire or theft of equipment, material, or other property of the City, incurred while the equipment, material or other property is located in any field office or on the site of the Work. Further, you must repair or replace any such equipment, material or other property so lost or damaged, to the satisfaction of the Commissioner, at no additional cost to the City.

You must familiarize yourself with the requirements of local and state laws applicable to underpinning, shoring and other Work affecting adjoining property and, wherever and whenever required by law, site conditions or standard industry practice, you must shore-up, brace, underpin, secure and protect all foundations and other parts of existing structures adjacent to, adjoining and in the vicinity of the Work site that may be in any way affected by the excavations or other operations connected with the Work to be performed under this Contract.

You are responsible for the giving of all required notices to any adjacent or adjoining property owner or other potentially affected party. The notice must be served in sufficient time so as not to delay the progress of the Work under this Contract.

You must take such precautions as are necessary to insure the safety of private property owners, lessees, and their invitees against injury caused as a result of settlement or displacement of structures. You must immediately proceed with all shoring or other Work necessary to restore the private property owner's property to a safe condition. If you fail to undertake the Work within 24 hours after written notice by the Commissioner, the City may proceed to repair or restore any such structure to a safe condition, and the cost of it will be deducted from any compensation due, or that may become due to you.

If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City, you must erect and maintain such barriers, and, during the night time, such lights as will effectively prevent the happening of any accidents or damage to life, limb, or property in consequence of such excavation or occupation of such street, alley, or public grounds. You are liable for all damage occasioned by you, your agents, employees or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and you must indemnify the City pursuant to Article XIX, "Insurance, Indemnity and Bonds."

Upon Final Completion and Final Acceptance of the Work, you must remove all machinery, equipment, materials, false work, rubbish or temporary structures and leave the Work site and the premises of any private property owners in as good condition as they were before commencement of Work.

Materials and equipment necessary for the performance of the Work may only be placed, stored or allowed to occupy any space in public streets or alleys upon the written consent of the Commissioner. It is the City's intent that the operations under this Contract are conducted as far as practicable without interference with the public use of streets and alleys. All materials or equipment used in the performance of the Work must

be placed so as not to impede traffic on streets and alleys adjacent to the site of the Work, and to allow free access to all fire hydrants, water valves and manholes that are a part of electric, telephone and telegraph conduit lines, fire alarms and police call boxes in the vicinity.

In removing existing pavements, sidewalks, curbs, gutters, walls, foundations, vaults and other structures, the use of any type of impact device in a manner that might damage buildings or their foundations, or other underground structures and utilities is not permitted.

You must indemnify and hold the City harmless from any damage due to settlement or the loss of lateral support of adjacent or adjoining property and from all loss or expense and all damages for which the City may become liable in consequence of the injury or damage to adjacent and adjoining structures and their premises. Your indemnity obligations will survive the expiration or termination of this Contract and include and apply to any liabilities and duties placed upon the City as owner or occupant of the property on which the improvements provided for in this Contract are to be constructed, by the provisions of an Act entitled "An Act to Prescribe the Duty of an Owner or Occupant of Lands Upon Which Excavations are Made in Reference to the Furnishing of Lateral and Subjacent Support to Adjoining Lands and Structures Thereon." See of 765 ILCS 140/0.01 et seq.

2. Existing and Proposed Utilities. The Contract may show existing utilities lying within the limits of the Work, such as sewers, manholes, catch basins, gas lines, water lines, telephone and electrical duct lines, CTA facilities, and similar structures. The City does not guarantee the completeness or accuracy of the information regarding utilities, whether public or privately owned. You must make your own investigation to determine the existence, nature and location of all utilities at the Work site. You must verify the exact location of all utilities that may interfere with performance of the Work and must report to the Commissioner any differences from the locations shown on the Contract.

You must so arrange and conduct your Work that utilities may be removed, relocated or supported during excavation and maintained in service until the Work is completed. In addition, you must arrange and conduct your Work that utilities may be replaced, rearranged or relocated before backfill being placed. You must cooperate with the owners of those utilities in the performance of the Work.

Where existing utilities are abandoned and it is necessary to remove them due to the performance of the Work, you must remove them at no additional cost to the City, and they will become your property.

It is your responsibility to protect those existing utilities that are to remain in operation during and after completion of the Work, and any new utilities installed by others during the performance of the Work. You will be held fully responsible for any damage resulting from your performance of the Work, and will be required to repair, replace or reconstruct any utilities damaged, at your own expense, to the satisfaction of the Commissioner. The protection of the utilities as specified in this Contract must be at no additional cost to the City.

3. Utilities Outside the Limits of the Work. You must protect and maintain City-owned water lines, sewers, connections and appurtenances and all City-owned electrical

conduits, cables, vaults and appurtenances that are located entirely outside the limits of the Work in a satisfactory manner until the completion of the Work. Whenever in the performance of the Work it is necessary, because of the nature of the Work or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair such City-owned structures located entirely outside of the excavations, you must notify the appropriate City department to perform the Work, and must cooperate with the department in preserving service. You must reimburse the appropriate City department for the cost of performing the Work at no additional cost to the City under the terms of this Contract.

4. Utility Relocation and Continuance of Service Plan. You must prepare a Utility Relocation and Continuance of Service Plan, identifying procedures, locations, time frames and affected agencies and private owners. The Plan must be submitted to the Commissioner for review within 14 days after the Notice to Proceed.
5. Cooperation with Utilities. You must cooperate with all utility companies involved in connection with the removal, temporary relocation, reconstruction, or abandonment by these agencies of all services or facilities owned or operated by them within the limits of the Work.
6. Work Performed by Others. The Work must be performed with a minimum of interference to street traffic in the area. You must coordinate your Work with that of other City contractors, with contractors employed by adjacent property owners, and with contractors employed by any other party or parties for work on utilities to insure the best progress of the Work as a whole.
7. Preservation and Protection of City Standard Bench Monuments and Survey Controls. You are responsible for the preservation and protection of all City Standard Bench Monuments, in accordance with the provisions of § 10-4-220 of the Municipal Code and Article 105.09 of the Standard Specifications, and as directed by the Commissioner. Any survey control point that you disturb or remove you must replace or reestablish to the satisfaction of the Commissioner, at no additional cost to the City. **DAMAGE TO ANY OF THE CITY STANDARD BENCH MONUMENTS WILL RESULT IN YOUR BEING PROSECUTED TO THE FULL MEASURE OF THE LAW.** The Department of Transportation will pursue the matter of compensation for damages incurred by the City resulting from your actions or your failure to act during the execution of Work on this project.
8. Protection of Streets and Traffic. You must provide all necessary barricades, signs, flags, lights and reflectors. You must assure that vehicular and pedestrian traffic on all streets, including adjacent streets, bridges, overpass structures and ramps is maintained during the performance of the Work in accordance with the requirements of the Contract.
9. Temporary Restoration of Trench Cuts. Failure to maintain the temporary restoration of trench cuts, which causes the surrounding work area to be in an impassable and/or hazardous condition thereby creating undue inconvenience and danger to area residents is an event of default under this Contract.
10. Temporary Barriers, Signs, Lights and Flaggers. You must furnish, relocate and remove portable barricades and lights, collision protection, temporary signs (including traffic and project signs) and supports as directed by the Commissioner; and furnishing all

necessary flaggers and other protection necessary for the maintenance of traffic flow in a safe and orderly fashion, as required by Article 107.14 of the IDOT Standard Specifications, except as otherwise specified in the Contract.

You must maintain, repair or replace all damaged or destroyed appurtenances referenced in the immediately preceding paragraph throughout the life of the Contract. Maintenance includes cleaning of the barricades and traffic signs by means of clean water. Flaggers must be provided whenever circumstances warrant.

The barricades must be erected, moved, repaired and repainted as required. Upon the completion of the Work, all barricades remain your property and must be promptly removed from the Work site.

11. Historical and Scientific Specimens. You must preserve and deliver to the Commissioner any specimens of historical or scientific value encountered in the Work, as directed by the Commissioner.

C. Protection of Streets, Alleys and Public Grounds

When excavating or occupying any street, alley or public grounds of the City, you must erect and maintain temporary barriers and, during the night time, lights that will effectively prevent accidents or damage to life, limb or property in consequence of the excavation or occupation of the street, alley or public grounds. You are liable for all damages as a result of the excavation or occupation of any street, alley or public grounds, or by the carelessness of you, your subcontractors, agents, employees or workers and must indemnify and hold harmless the City against all judgments rendered against it by reason thereof.

Construction Period Traffic Management Plan. You must prepare a Construction Period Traffic Management Plan consistent with the requirements of the Contract. The Plan must be submitted to the Commissioner for review within 14 days after award. You must comply with all applicable federal, state and local requirements and coordinate with Chicago Department of Transportation, Bureau of Traffic and Illinois Department of Transportation. You must also comply with the following requirements:

1. Construction staging segments must be kept as short as feasible;
2. Lane closure must be kept to a minimum, and at least one lane must remain open to vehicular traffic;
3. Intersections must remain open to traffic in both directions at all times;
4. Detours must be provided in streets as necessary and approved by the Commissioner;
5. Signage plans must be developed and implemented for all approved detours;
6. Coordinate adjustments required for traffic signals; and
7. Allow for emergency access at all times.

D. Protection of Existing Trees in the Right of Way

1. In accordance with the provisions of Chapter 10-32 of the Municipal Code you must protect all trees and shrubs at the construction site from damage. You must restore all

damaged parkways to their original condition and repair or remove and replace any trees and shrubs damaged as a result of construction activity (as determined by the Department of Streets and Sanitation, Bureau of Forestry) at your expense. If any trees or shrubs damaged by construction activity must be removed and replaced, and trees or shrubs of comparable size, type, and value are unavailable or the time for planting is unsuitable, the City will charge you their appraised value determined as provided under § 10-32-200 of the Municipal Code, which amount the City will deduct from amounts due you, or, if no amounts are due, then you must promptly pay the City the amounts determined. Any tree greater than 4" D.B.H. that is permanently damaged due to the construction project and not originally marked for removal must be replaced with a new tree as identified by the Bureau of Forestry and must have a minimum of 4" caliper B&B. Any damaged tree smaller than 4" caliper measured 6" above the ground must be replaced in kind, inch for inch.

2. You must install a **protection barrier or temporary fence** of at least 1.2m (4 feet) in height around each tree to be *protected and preserved*. *The tree protection* must be installed before the actual construction starts and maintained for the duration of the project.

Within this protection zone, you must prevent construction materials from being stored, equipment from being operated and temporary storage buildings or work trailers from being placed.

The protection barrier must be constructed of orange snow fencing securely fastened to fence posts spaced a maximum of 1.5 m (5 feet) on center. Posts are 1.8m (6 feet) in length with 61 cm (2 feet) set into the ground and 1.2m (4 feet) extending above ground. The fencing must be attached to the post with a minimum of four nylon locking ties evenly spaced at each post.

Dimensions of the **protection barrier** are as follows:

Trees located in Tree Pits: Where trees are located within Tree Pits, the temporary fencing should be installed at a minimum distance of the inside dimension of the Tree Pit opening with one stake at each corner of the opening.

Trees located in Parkways or Boulevards:

Small Trees (<9" D.B.H.): Minimum 1.5m (5 feet) from face of tree along the parkway length. In the dimension bordered by the public sidewalk or curb, the temporary fencing must be the width of the grass parkway with a maximum offset of 30cm (1 foot) from back of curb or edge of sidewalk. In no case must the closure be less than 61cm (2 feet) from the centerline of the tree.

(Example: 6" Tree in a 6' parkway as measured from back of curb to sidewalk. The dimension of the protection fencing would be 1.2m x 3m (4' x 10') with tree in the center). Note: Larger grass parkways (>12') may allow for a ten foot by ten foot (10' x 10'). Thus, the dimension bordered by the sidewalk or curb would not affect fencing distance.

Medium (10" to 15" D.B.H.): Minimum of ten (10) feet from face of tree along the parkway length. In the dimension bordered by the public sidewalk or curb, the fencing must be the width of the grass parkway with a maximum offset of one foot from back of

curb or edge of sidewalk. In no case must the closure be less than two feet from the centerline of the tree.

Large (>15" D.B.H.): Minimum of 15 feet from face of tree along the parkway length. In the dimension bordered by the public sidewalk or curb, the fencing must be the width of the grass parkway with a maximum offset of one foot from back of curb or edge of sidewalk. In no case must the closure be less than two feet from the centerline of the tree.

E. Care of Existing Structures and Property

1. Property Access Maintenance Plan. You must prepare a Property Access Maintenance Plan consistent with the requirements of the Contract. The plan must be submitted to the Commissioner for review within 14 days after award of the Contract. You must comply with all applicable Federal, State, and local requirements. You must also comply with the following requirements:
 - a. Maintain vehicle and pedestrian access to properties;
 - b. Maintain pedestrian access on both sides of all streets;
 - c. Provide access walkways to all buildings and businesses;
 - d. Sidewalks must remain open to the maximum extent possible;
 - e. Provide temporary relocation of access, where required;
 - f. Provide advisory and temporary signs for pedestrian and vehicle access changes and reroutings; and
 - g. Coordinate delivery locations and timing.
2. Before doing any Work adjacent to or on the site of any buildings or other structures adjoining or in the line of the Work to be performed under the Contract, you must supply written notice of it to the owner or owners that the Work is to be done, and must cooperate with the owner(s) in the maintaining, removing, relocating, rearranging or adjusting wherever necessary, of all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment, or other appliances and structures located in any portion of the streets, public areas, highways and easements to be occupied or used during the prosecution of the Work.
3. Wherever in the performance of the Work it is necessary to remove, reconstruct, relocate, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewers connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the Work as shown on the plans, or ordered by the Commissioner you must perform the Work necessary to remove, reconstruct, relocate, rearrange, adjust or repair those structures and appurtenances, unless otherwise noted on the plans.
 - a. The Commissioner will, at his sole discretion, direct you to modify your method of Work to interfere as little as possible with the normal conduct of business in or around the portions of the buildings or structures in use.

- b. The building or structures may be in full time use and operation and will continue in normal use during performance of the Work. Building facilities, including heating, ventilation, and air conditioning, lighting and plumbing, will not be interrupted in the occupied areas, except as required for making connections to power sources as specified below.
 - c. You will serve written notification to the Commissioner requesting any anticipated interruption in facilities at least two weeks before disruption of services. You must provide any temporary facilities deemed necessary by the Commissioner due to a disruption of services. The Commissioner, in his sole discretion, will determine the procedures, times of day and dates you may accomplish the Work and may reject or modify your request.
 - d. Storage of all material and/or equipment must be in areas approved by the Commissioner, in a manner to minimize interference with the normal conduct of business in or around the occupied portions of the building and vehicular areas.
4. You must not perform Work on City-owned water mains, connections and appurtenances or on any City-owned electrical conduits, cables, vaults and appurtenances unless the City has abandoned the structure and the Commissioner has authorized the Work or the Work is included in the Contract. But, you must adjust City-owned water manholes and electric manholes that are shown as “to be adjusted” on the plans.
- a. You must protect and maintain in a manner satisfactory to the Commissioner, protect and maintain all City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances that are located entirely outside of the neat lines of the excavation as shown on the plans or as ordered by the Commissioner, until the completion of the Work under the Contract. Whenever in the performance of the Work under the Contract it becomes necessary because of the nature of the Work required by the Contract or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair those City-owned structures located entirely outside of the excavations, you must notify the appropriate City Department to perform the Work, and must cooperate with the Department in preserving service in or through them. You must reimburse the appropriate City Department for the cost of performing the Work, and the cost must be included in the various Contract prices.
 - b. Without cost to you the City will support, protect and maintain all City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances, any part of which is located inside of the neat lines of the excavations as shown on the plans or ordered by the Commissioner, or it will remove, replace, relocate, rearrange, adjust, or repair them, both inside and outside of the excavations. You, however, must adjust those City-owned water manholes and electric manholes that are shown as “to be adjusted” on the plans. Whenever in the performance of the Work under the Contract it becomes necessary to support, protect, maintain, remove, replace, relocate, rearrange, adjust or repair such City-owned structures any part of which is located inside of the excavations, you must notify the appropriate City department to perform the Work and must cooperate with the department in preserving service in or through them.

- c. With the exception of the City-owned water mains, connections and appurtenances and the City-owned electric conduits, cables, vaults and appurtenances described above, and with the exception of City-owned structures that are to be removed or otherwise Worked upon as part of the requirements of the Contract, you must support, protect, maintain or relocate and rebuild all poles, trees, shrubbery, fences, sewers, pipes, conduits, cables, wires, manholes, tunnels, buildings, subways and other City-owned structures that pass through and are located within the excavations or that are adjacent to the Work to be constructed under the Contract during the construction and until the completion of the Work under the Contract.
5. You must notify and cooperate with the owners thereof in maintaining, removing, relocating, rearranging, or adjusting wherever necessary, all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment or other appliances or structures located in any portion of the streets, public areas, highways and easements that are to be occupied or used during the construction of the Work specified under the Contract.
 - a. Wherever in the performance of the Work specified under the Contract it becomes necessary to remove, replace, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the excavations as shown on the plans or ordered by the Commissioner, you must perform the Work necessary to remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances. The cost of performing the Work must be included in the Contract price.
 - b. Wherever in the performance of the work specified under the Contract it becomes necessary to support and maintain City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances or wherever it becomes necessary as a result of your methods of construction during the Work under the Contract, to remove, replace, relocate, rearrange, adjust, or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances (other than those specified in the last preceding paragraph) you must perform the Work necessary to support, maintain, remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances, and you must bear the cost of the Work without any additional compensation for it.
 - c. It is the intention of the specifications that you include in the appropriate Contract Price or prices, all necessary cost and expense of supporting, maintaining, removing, replacing, relocating, rearranging, adjusting or repairing all City-owned appliances and structures (other than City-owned water mains, connection and appurtenances and City-owned electrical conduits, cables, vaults and appurtenances described in Section XVI.E.4.b), encountered in or affected by the Work, and that you must also include in the price or prices all necessary cost and expense of removing structures that have been or will be abandoned by their owners and that are necessary to be removed in order to construct work under the Contract, but you must not

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include in the price or prices the cost or expense of supporting, maintaining, moving, replacing, relocating, rearranging, adjusting or repairing those appliances or structures that are not owned by the City and are not abandoned by their owners, except as may be otherwise specified below in this Section.

6. You must take all reasonable precautions for the protection of buildings, railroad tracks, street railway tracks and appurtenances, and other appliances and structures not owned by the City.
7. You must determine the methods to be employed, the procedure to be followed, the equipment, plant, falsework, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract and the approval of the Commissioner. Only adequate and safe procedures, methods, structures and equipment must be used.
8. You must provide drawings and calculations for all equipment, falsework, shoring, bracing and other temporary structures required for the Work, designed, signed and sealed by an Illinois licensed structural engineer. You must submit copies of all such drawings and calculations to the Commissioner for information only.
9. Field Check of Dimensions, Cutting and Patching. Where the Work connects to existing structures or appurtenances, you must take complete field measurements affecting all Work under this Contract and are solely responsible for the proper fit between the Work and existing structures or appurtenances. You must perform all cutting, patching, or fitting of Work that may be required to properly fit together the several parts of the Work and the existing structures or appurtenances.
10. Contractor's Layout of the Work. You are responsible for the correct lay-out and accurate fitting of all parts of the Work. You must furnish at your own expense all labor, materials and other expenses necessary for, or incidental to, the setting and maintaining of lines and grades (exclusive of the Work of establishing the original reference base line and bench marks that will be performed by the City). No separate payment to you for the cost of any of the Work specified in this Contract. The cost is included in the Contract unit or lump sum prices.
11. Salvage of Materials. If and whenever City- owned property such as valves, cast iron manholes, catch basin frames and covers, inlet boxes and grates, or any other appurtenance are to be removed and are not to be reused in the Work, you must securely store them at a suitable place on the job Site for possible use by the City (unless otherwise stipulated). You must take care to prevent damage in your handling of these appurtenances. You must deliver all items identified by the City for reuse to a location designated by the Commissioner and must legally dispose of the remaining items.
12. Wherever basements of buildings, subsidewalk vaults, tunnels, sewers, water, gas, telephone, telegraph, electric or other pipes, conduits, cables, wires, manholes, vaults, steam and street railway tracks or other similar structures and appliances not owned by the City are in or cross the excavations for structures to be built under this Contract, you must notify the owners of the structures and appliances to support, move, rearrange or abandon them, and cooperate with the owners of the structures and appliances in

preserving the service or services provided by the structures and appliances, except as may be otherwise specified or provided in the Contract. If you have complied with the above requirements and has been notified by the owners of the structures and appliances that any of them have been abandoned, or lacking such notice, if you have made all investigations and has found that any of the above structures or appliances have been abandoned by their owners and if the removal of any such abandoned structure or appliance is necessary in order to construct the Work, you must remove them at no additional cost to the City.

13. Wherever basements of buildings, subsidewalk vaults, tunnels, sewers, water, gas, telephone, telegraph, electric or other pipes, conduits, cables, wires, manholes, vaults, steam and street railway tracks or other similar structures and appliances are adjacent to, but do not cut through or cross the excavations for structures to be built under the Contract, you must perform the Work in such a manner as to not cause damage to the structures and appliances and not interrupt their use during the progress of the Work.
14. You must arrange to notify the owners of structures and appliances that are to be supported, maintained, removed, reconstructed, relocated, rearranged, adjusted or repaired by reason of the Work in ample time to permit them to do their work. The Commissioner may direct you to suspend your operations on that part of the Work that affects the structures and appliances until their owners have had time to perform the work.
15. You must conduct the Work so that no equipment, material or debris is placed upon private property unless you have first obtained the owner's written consent thereto and provided this written consent to the Commissioner. You must take such means as may be required to prevent the creation of a public nuisance on any part of the Work site or adjacent streets or property.
16. You must thoroughly clean all streets, pavements, sidewalks and parkways and all private property of all surface materials, earth and rubbish and restore them to as good condition as before the commencement of the Work. Where you have removed or killed sod, you must provide new live sod. Where the areas have been seeded, you must replace top soil equivalent to that removed, fertilize it, seed and roll it to the satisfaction of the owner of the land. You must replace all trees, shrubs and plants damaged in the proper season of the year with live, growing stock of the same kind and variety and of the size ordinarily used for planting purposes.

F. Precautions and Safety

1. You must take any precautions that may be necessary to render all portions of the Work secure in every respect, to decrease the liability of accidents from any cause and to avoid contingencies that are liable to delay the completion of the Work. You must furnish and install, subject to the approval of the Commissioner, all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of engineers and inspectors during the performance of the Work. You are required to conduct your Work so as not to unnecessarily obstruct the activities of other contractors who also may be engaged in work on this or any other project.

2. Although the Commissioner may observe the performance of the Work and reserves the right to give you opinions and suggestions about safety defects and deficiencies, the City is not responsible for any unsafe working conditions. The Commissioner's suggestions on safety, or lack of it, will in no way relieve you of your responsibility for safety on the Work site. You have sole responsibility for safety and the obligation to immediately notify the Commissioner of all accidents.
3. Precautions must be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes must be observed.
4. You must provide completely equipped first aid kits readily accessible at all times on the Work site. You must designate an appropriately trained individual on each shift to be in charge of first aid.
5. You must provide at appropriate locations fire extinguishers or other fire protection equipment that comply in all respects with the Municipal Code and NFPA standards. You must maintain this equipment in proper operating condition at all times and must cause the equipment to be inspected by all appropriate agencies as required by law, but in no event less than monthly. You must comply with the Municipal Code requirements on the use of standpipes, hoses and other fire protection equipment.
6. Only such materials and equipment as are necessary for the construction of the Work under this Contract must be placed, stored or allowed to occupy any such space at the site of the Work. Not more than one day's supply of flammable liquids, including oil, gasoline, paint, or solvent is permitted to be kept on hand at any one time. If gasoline, flammable oils, other highly combustible materials or compressed gas cylinders are to be stored at the site, they must be stored in a secure manner, in compliance with all applicable laws, ordinances and regulations, and all storage places must be clearly marked. The written consent of the Commissioner is required for such storage. That consent in no way limits your liability for the materials.
7. You must prohibit all lighting of fires about the premises and all smoking in restricted areas where posted with "NO SMOKING" signs, and you must diligently enforce this prohibition. You must furnish and post "NO SMOKING" signs. You must not permit any debris or waste materials to be burned at the Work site.

G. Health, Safety and Sanitation

1. Clean-Up. During construction, you must keep the Work site and adjacent premises as free from material, debris and rubbish as practicable. Haul roads, streets and public areas must be swept daily. Before Final Completion and Acceptance of the Work, you must remove from the Work site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades and signs and must restore the site to the same general conditions that existed before the commencement of the Work. The cost of final clean-up is included in the unit prices for the various items, or included in the Contract lump sum price, as the case may be. You must clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt and any other foreign materials

deposited or accumulated on any portion of your Work, or existing facilities and structures, due to your performance of the Work.

2. Snow and Ice Removal. You must remove snow and ice that may impair progress of Work, be detrimental to workers, or impair trucking to and from points of delivery at the Work site.
3. Glass Breakage. You must replace all glass broken or damaged during construction at no additional cost to the City. You must promptly remove all broken glass from the Work site.
4. Noise and Vibration Control. All equipment, vehicles, and Work under this Contract must be conducted in accordance with the City Building Code, Chapter 11-4 of the Municipal Code, "Environmental Protection and Control," Article VII - *Noise and Vibration Control*, so as to cause a minimum of noise, vibration and inconvenience to the activities of the occupants of property and buildings in the vicinity of the Work. When the Commissioner, in his sole discretion, determines that your operations constitute a nuisance, you must immediately proceed to conduct your operations in a manner that abates the nuisance. You must provide all measures, including engine and exhaust mufflers, acoustic casing enclosures, maintaining equipment, or physical barriers along the edges of the construction zone, required to minimize noise and vibration. Noise and vibration levels may be monitored by the Commissioner.
5. Health and Safety. You must comply with the requirements of 29 C.F.R. part 1926 - Safety and Health Regulations for Construction, promulgated under the U.S. Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 *et seq.* (OSHA). Copies may be obtained from the Regional Administrator of the U.S. Department of Labor, Federal Office Building, 230 S. Dearborn, Chicago, Illinois.

You must comply with the requirements of the Illinois Health and Safety Act, 820 ILCS 225/.01 *et seq.*, and the rules and regulations promulgated under it by the Director of Labor for the State of Illinois, which are on file with the Illinois Secretary of State.

Whenever a Federal OSHA Compliance Officer arrives at the work site, you must notify the Commissioner immediately. At the conclusion of the inspection, you must report any findings to the Commissioner. Copies of any citations issued and related documents must be submitted to the Commissioner.

You must maintain the following records and make available to the Commissioner for review: (i) all records required by OSHA, including the accident log, Fed/OSHA #200, and posting of the prescribed OSHA poster; (ii) log of safety activities, accident investigation, employee instruction, training, tool-box meetings, and any other pertinent information; and (iii) Material Safety Data Sheets (MSDS) as required for each material you have used at the Work site.

6. You must enforce among your employees such regulations in regard to cleanliness and the disposal of garbage and wastes that are necessary for their health and tend to prevent the inception and spread of contagious and infectious disease among them. You must provide an ample supply of suitable, pure drinking water, and must take such means as the Commissioner may direct to effectively prevent the creation of a nuisance on any part of the Work site or adjacent streets or property. You must construct and

maintain necessary sanitary conveniences for the use of the laborers on the Work, properly secluded from public observation, in such manner and at such points as be approved, and their use must be strictly enforced. Whenever manholes have been used for sanitary proposes, they must be thoroughly flushed and cleaned when no longer needed.

The manner of disposing of waste must be such that all waste is disposed of without creating a public nuisance or health hazard and in accordance with Illinois Department of Public Health Circular No. 815, Educational Health Circular No. 4.001, and all Illinois Environmental Protection Agency rules and regulations.

You must also comply with all rules and regulations of the Federal and State governments and the City Department of Public Health.

H. Hazardous Operations and Security

1. During construction, all cutting or welding operations must be carried out with all precautions taken to prevent fires resulting from sparks or hot slag. Extreme care must be exercised to determine that sparks or embers do not fall into any combustible materials, even if such material is stored on lower floors. Sheet metal wind screens must be provided around the lead-melting furnaces whether the Work site is enclosed or not. Portable fire extinguishers must be provided at and below all locations where cutting or welding or melting operations are being performed or, if those operations are extensive, a hose from the stand pipe system or fire hydrant must be placed nearby. You must obtain special permission from the Commissioner of Water and pay all associated connection fees.
2. No welding, flame cutting, or other operations involving use of flame, arcs, or sparking devices, will be allowed without adequate protection. All combustible or flammable material must be removed from the immediate working area. If removal is impossible, flammable or combustible materials must be protected with fire blankets or suitable non-combustible shields to prevent sparks, flames or hot metal from reaching flammable or combustible materials. You must provide necessary personnel and equipment to control incipient fires resulting from welding, flame cutting, or other sources involving use of flame, arcs, or sparking devices.
3. You must immediately report any concentration of gas fumes, and you are responsible for clearing the area and notifying the Commissioner and the appropriate utility company. All operations in the area must be suspended until the source of the fumes has been located and corrected.
4. You must arrange for the installation of necessary fire protection lines and equipment as required by the Chicago Fire Department and as necessary to properly protect the Work site. Permanent fire protection facilities may be used for this purpose as soon as they are installed, tested and approved by the Commissioner for temporary use.
5. Salamander heaters or similar forms of uncontrolled heaters must not be used except with the special written permission of the Commissioner and City fire marshal and then only when each salamander is maintained under constant supervision.
6. Gasoline must be kept in and handled from approved safety cans.

7. All tarpaulins used for any purpose must be made of fire, water and weather-resistant materials.
8. You must furnish such watchmen as may be necessary to protect the public and those who are at or in the vicinity of the Work under this Contract, and to protect all materials, tools, machinery and equipment and all Work you have performed.
9. You must comply with all Federal and State and local occupational health and safety statutes, and any occupational health and safety standards promulgated thereunder; provide reasonable protection to the lives, health and safety of all persons employed under this Contract; furnish to all such persons a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm; keep all persons employed under this Contract informed of your protections and obligations under the statutes; and provide all persons employed under this Contract with information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms and emergency treatment. The Federal and State occupational health and safety statutes, and the rules and regulations promulgated thereunder, are considered part of this Contract as though fully set forth in this Contract.
10. You must provide safety instructions and training for all workers. You must conduct weekly craft safety meetings (tool-box type) of reasonable length as an effective means of communicating safety issues to workers. Reports containing tool box discussion topics must be signed-off by all attendees and must be submitted to the Commissioner.

I. Services and Use of Site

1. Work Area. After receipt of the Notice to Proceed, you must propose a suitable working area subject to approval by the Commissioner. You must secure the space at your own expense.
2. Temporary Services and Utilities. If specified in the Contract, you are responsible for arranging for and providing all general services and temporary facilities as specified in the Contract and as required for the proper and expeditious prosecution of the Work. You must pay all costs for those general services and temporary facilities. You must provide temporary connections for water, electricity and heat including installation, maintenance and removal of those facilities. You must pay the cost of all water, telephone, and electricity during the construction period.
 - a. Water. You must provide temporary water connections as required for drinking and construction purposes. The Commissioner reserves the right to regulate the use of water and may impose restriction on the use if you are using water carelessly. You must provide water and facilities for obtaining water for sanitary purposes, drinking, mixing concrete and for all other purposes at your expense. You are not permitted to obtain the water from the mains of the Chicago water system, except as may be provided in the Contract. Except with special permission from the Commissioner and the Department of Water, you must not make connections for water to the City's fire hydrants.
 - b. Light and Power. You must furnish the electricity and must furnish and install all wiring, electrical services, lighting units, insulated supports for wiring and all other electrical equipment together with all other incidental and collateral Work

necessary for the furnishing of the temporary power and lighting facilities for the Work to be done under this Contract, all at no additional cost to the City. Electrical Work must be performed by a licensed electrician.

- c. Temporary Heating During Construction. You must provide temporary closures or enclosures for all exterior door, window, roof or other types of exterior openings as required to provide protection from the elements during construction. It is your responsibility to keep water in pipes from freezing and to maintain temporary heat in areas where Work is being performed at not less than 50° Fahrenheit. Finish Work includes, but is not limited to masonry, plastering painting, millwork and other temperature sensitive Work. The Heating period is from approximately October 1 to May 30 unless conditions warrant otherwise. You must furnish, install, operate and maintain all required temporary heating equipment, and must provide and pay all fuel costs.
3. Temporary Construction Facilities. Unless otherwise specified, you must provide and maintain the following temporary construction facilities throughout the construction period and remove them at the completion of the Work:

- a. Field Offices. Unless otherwise specified in Book 3, you must provide a temporary building or mobile type field office of such size and containing such equipment as you deem necessary to conduct the operations. The field office must be provided with a telephone for your superintendent and a pay telephone for use by others during the entire period of construction. The telephone must be removed promptly upon Final Completion and Acceptance of the Work.

Unless otherwise specified in Book 3, you must supply a field office for the City's Superintendent consisting of a separate office facility. It must be of adequate size for efficient operations and be furnished with a desk, three chairs, 4-drawer file cabinet and a plan table. It must be equipped with electric lighting, heating, ventilating and cooling facilities. You must provide a separate telephone for City Superintendent's use.

You must also provide and maintain in clean condition for Superintendent's use, including toilet facilities, having a water closet and laboratory fixture connected to sanitary sewer and water service. Temporary toilet facilities must be located in the City's Superintendent's trailer and comply with City and State regulations relating to health and sanitation. The toilet facility must be serviced twice weekly and kept stocked with toilet paper, soap, and paper towels.

- b. Toilets. You must provide at least one portable chemical toilet for every 20 workers or fraction of that number at the Work site as soon as construction operations commence. Toilet facilities must be serviced, at a minimum, twice weekly, which includes draining tank and refilling and disinfecting the interior of each toilet unit, and keeping each unit stocked with toilet paper. Toilet facilities must be maintained during the term of the construction period and removed upon completion of the Work.
- c. Stove heaters in temporary offices and sheds must be properly installed to protect combustible walls, floors and roof.

- d. **Storage of Materials.** If it is necessary to store materials, they must be protected in such a manner as to insure the preservation of their quality and fitness for the work. All stored materials will be inspected at the time of use in the Work even though they may have been inspected and approved before being placed in storage. You may store materials in the areas provided as working areas by the Contract. If no areas are provided, or if the areas provided are insufficient, you must provide the space required at your expense. Upon completion of the Work, you must clean and restore the storage sites and working areas to their original condition at your expense.

All materials and equipment must be received at the Work undamaged. The Commissioner has the right to reject any method of packing and shipping that, in the Commissioner's opinion, will not adequately protect the materials and equipment against damage while they are in transit or storage or that will damage existing structures.

- e. **Storage Sheds.** You and each Subcontractor must provide suitable watertight storage sheds for your, or their own, use as needed. You and each Subcontractor are responsible for and must pay for any electric services to your or their storage sheds. However, the electrical Work must be performed by a licensed electrical Subcontractor. You are responsible for materials stored in the open; they must be arranged in an orderly manner and properly protected against the elements and damage.
4. **Working Space.** You must provide working space for your own use and for each of your Subcontractors. It must provide sufficient space for benches, tools, material storage and for such other purposes as may be required to properly perform and expedite the Work. Allocation of such Work areas is subject to approval by the Commissioner. You must maintain all Work areas in a clean and orderly condition and take whatever precautions as may be necessary adjacent to the new Work. You must clean, repair or replace any damage to Work site due to improper protection at no additional cost to the City.
 5. **Equipment and Falsework:** You must determine the methods to be employed, the procedures to be followed, the equipment, plant, falsework, shoring, bracing, and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract. Only adequate and safe procedures, methods, structures, and equipment must be used. You must furnish and maintain and are solely responsible for all equipment such as temporary ladders, ramps, runways, hoists, scaffolding, and similar items required for proper execution of Work. All such apparatus, equipment and construction must meet the requirements of Federal, State and local laws concerning the safety and protection of employees. No hoist, scaffolding or other equipment must be erected at such location as will interfere with general construction or progress of other trades. Hoists, scaffolding or other equipment must be located at sufficient distance from exterior walls to prevent staining or marring of any permanent Work. All suspended scaffolding and staging must be lowered to ground level at the end of each work day.
 6. **Project Signs.** You must erect and maintain signs identifying the Project and indicating City, and to the extent applicable, State and Federal participation. Work under this item includes constructing and erecting project signs of the size and material specified in the Contract drawings. These signs must be erected in locations approved by the

Commissioner and must be maintained throughout the term of this Contract. You are responsible for the immediate removal of graffiti. If you are notified of graffiti, you must remove such within 24 hours. The signs must not be removed until you receive such notice from the Commissioner. No separate payment will be made for furnishing, erecting and maintaining the project signs; it is incidental to the Contract.

J. Reports and Plans

1. Daily Progress Reports. You and all Subcontractors must prepare and submit to the Commissioner daily progress reports on the various parts of the Work. The report must include the number of workers and the classification of the trades involved, equipment used and any pertinent information regarding possible delays in the Work.
2. Procedures, Methods and Equipment. You will determine the methods to be employed, the procedure to be followed, the equipment, plant, falsework, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract. Only adequate and safe procedures, methods, structures and equipment must be used. Any approval, constructive or otherwise, by the Commissioner of such methods, procedures and equipment in no way relieves you of any of your obligations under this Contract.

XVII. STANDARD SPECIFICATIONS

A. Concreting in Freezing Weather

You must provide protection of Portland Cement Concrete from cold weather in accordance with Articles 1020.13(c) and/or 1020.13(e) of the Standard Specifications. The cost of all protection of the concrete from cold weather as may be required and as specified in the those specifications must be included in the contract unit prices for Class "SI" concrete other appropriate items of the contract and no additional payment will be made therefore.

B. Protection of Railroad Traffic and Property

The following supplements the Standard Specifications and any Supplemental Specifications in effect; and in case of conflict with any part of parts of the Standard or Supplemental Specifications, this supplement takes precedence and governs. Add the following to Article 107.12., "Protection of Railroad Traffic and Property":

Whenever such Work, in the opinion of the Railroad Engineer, or his duly constituted and authorized representative, may affect the safety of trains and the continuity of the Railroad's operations, the method of doing such Work must first be submitted to the Railroad Engineer for approval, which will not be unreasonably withheld or delayed, and without which the Work must not be commenced or prosecuted.

The approval of the Railroad Engineer is not to be considered as a release from responsibility or liability for any damage that the Railroad may suffer, or for which it may be held liable by the acts of you, your Subcontractors, or your or their employees.

You are cautioned that when you are working over and/or near railroad property, you must provide adequate protection to safeguard the railroad property. You must also notify all railroad companies affected by the construction 10 days before starting any work that involves working on or over railroad property and must receive permission from the companies before entering onto railroad property.

XVIII. ENVIRONMENTAL REQUIREMENTS

A. Compliance with Environmental Laws

1. You must comply with all Environmental Laws including those listed in the Economic Disclosure Statement and Affidavit (EDS), which you must execute and have notarized, and any analogous future local, State or Federal ordinance or statute, rule and regulation promulgated under or under the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the Federal government, any state or any political subdivision thereof, or any agency, court or body of the Federal government, any state or any political subdivision thereof exercising executive, legislative, judicial, regulatory or administrative functions.
2. If you are required under any Environmental Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on, under, or about any premises you use to perform the Work required under this Contract, you must provide a copy of the report or notice to the City. In the event of a release or threatened release of Hazardous Materials or special waste into the environment, or in the event of any claim, demand, action or notice is made against you regarding your failure or alleged failure to comply with any Environmental Law, you must notify the City pursuant to Section XVIII.C, "Disposal of Waste Materials, Construction Debris, Soils and Waste," below.
3. If you fail to comply with any Environmental Law, the City may terminate this Contract in accordance with the default provisions of this Contract and may adversely affect your eligibility for future contract awards.

B. Environmental Permits

1. You must show evidence of, and keep current throughout the term of this Contract, all waste hauling, special waste hauling, disposal permits and insurance certificates required by Federal, State, City or other local governmental body or agency pursuant to any Environmental Law.
2. When requested by the Chief Procurement Officer, you must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Chief Procurement Officer throughout the duration of this Contract. Noncompliance with this requirement may be cause for rejection of the bid and/or termination of this Contract and declaring you non-responsible in future bids.

3. Environmental Records and Reports. You are required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including:
 - a. Vehicle maintenance records;
 - b. Safety and accident reports;
 - c. IEPA or OSHA manifests;
 - d. Disposal records, including disposal site used, date, truck number and disposal weight, bills of lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material; and
 - e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

C. Disposal of Materials, Construction Debris, Soil and Waste

1. You are responsible for the proper disposal of all materials, construction debris, soil and other waste. Hauling and disposal by a Subcontractor does not relieve you from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes must be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. You must identify the disposal site(s) or transfer station(s) to which you have contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.
2. You must provide the Commissioner or his designated representative with copies of all load tickets, manifests, bills of lading, scale tickets and other pertinent documents. When requested by the Chief Procurement Officer, you must provide copies of all permits and/or licenses for the proposed transfer station and/or landfill. If the transfer station and/or landfill you propose to use does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, you must replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the City. If you dispose of materials, construction debris, soil or other wastes at a site that is not properly permitted, you will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.
3. You must notify the Commissioner, within 24 hours, of receipt of any environmental complaints, fines, citations, violations or notices of violation ("Environmental Claim") by any governmental body or regulatory agency against you by any third party relating to the loading, hauling or disposal of materials, construction debris, soil or other wastes. You must provide evidence to the Commissioner that any such Environmental Claim has been addressed to the satisfaction of its issuer or initiator.
4. You must notify the City of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of materials, construction debris, soil and other wastes under this Contract in which you are asked to participate.

5. You must verify, in writing, whenever requested by the Commissioner, that all materials, construction debris, and other waste you accept from the City have been disposed of in compliance with all Environmental Laws.
6. The form for identifying your debris disposal/handling site(s) and acknowledging terms and conditions relating thereto which you have executed and attached to this Contract is incorporated by reference (the "Form"). In addition to the representations and requirements contained in the Form, you acknowledge that unless otherwise authorized in writing by the Commissioner of Environment, you must not continue to use a disposal/handling site identified in the Form that (i) has been cited as being in violation of any environmental law or regulation or of any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the Form, you must arrange for a substitute disposal/handling site that meets the requirements specified in the Form and provide a revised Form to the Commissioner of Environment. You further acknowledge that any such substitution is at no additional cost to the City, regardless of the reason necessitating such substitution.

D. Equipment and Environmental Control During Transport

You must haul materials, construction debris, soil and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer materials, construction debris, soil and other wastes must be designed to prevent spillage during the hauling operation. Your equipment must fully comply with all City, State and Federal Regulations, laws and ordinances pertaining to size, load weight, safety and any Environmental Law.

E. Environmental Control

In performing the Work, you must become thoroughly familiar with all Federal, State, and local statutes, ordinances, and directives with respect to the elimination of excessive noise and pollution of air, water, and soil due to construction and other operations. Attention must be given to reduce the noise of heavy construction equipment and to the control of dust, smoke, and fumes from construction equipment and other operations on the Work site, and the dirt and noise created by heavy truck operations over City streets in accordance with ordinances of the City and orders of the Commissioner. The discharge of Hazardous Materials into waterways and City sewers is not permitted.

F. Open Dumping Prohibited

The removal of all recyclable material and garbage, refuse or other waste material, including broken concrete, bricks, rock, paving asphalt and incidental debris generated from all construction or demolition activities performed under this Contract, must be transported to a facility that is zoned and permitted to accept the material under Chapter 11-4 of the Municipal Code and all applicable local, State, and Federal regulations.

You must retain bills of lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material and make them available to the City upon request

G. Environmental Protection

You must comply with, and must cause your Subcontractors to comply with, all Federal environmental and resource conservation laws and regulations, whether existing or promulgated later, as they apply to this Contract. You must include these provisions in all subcontracts. Some, but not all, of the major Federal laws that may affect this Contract include the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* and scattered sections of 29 USC; the Clean Water Act, as amended, scattered sections of 33 USC and 12 USC; the Resource Conservation and Recovery Act, as amended, 42 USC §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§ 9601 *et seq.* You and your Subcontractors must also comply with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; U.S. DOT statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 *et seq.*; and U.S. DOT regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

1. Air Quality. You must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* Specifically, you must comply with applicable requirements of U.S. EPA regulations, "Conformity to State of Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act," 40 CFR Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR Part 93; and National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR § 61.145. You further must report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Contract implementation activity to the City and the appropriate U.S. EPA Regional Office.
2. Clean Water. You must comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251 *et seq.* You further must report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Contract implementation activity to the City and the appropriate U.S. EPA Regional Office.
3. List of Violating Facilities. You acknowledge that any facility to be used in the performance of the Contract or to benefit from the Contract must not be listed on the U.S. EPA List of Violating Facilities ("List"), and you must promptly notify the City if you receive any communication from the U.S. EPA that such a facility is under consideration for inclusion on the List.
4. 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, you 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.

H. Clean Diesel Fleet (Section 2-92-595 of the Chicago Municipal Code)

1. If this Contract is for construction, demolition, restoration, repair, renovation, environmental remediation, or environmental abatement of any building, structure, tunnel, excavation, roadway, bridge, transit station, or parcel of land and the estimated value of this Contract is \$2,000,000 or more:
2. The Contractor must comply with the Clean Diesel Contracting Ordinance, Section 2-92-595 of the Municipal Code of Chicago.
3. The Contractor and any Subcontractor(s) must utilize Ultra Low Sulfur Diesel Fuel (ULSD) for any heavy-duty diesel-powered vehicle, non-road vehicle or non-road equipment used in the performance of the Contract.
4. The Contractor and any Subcontractor(s) must minimize idling of motor vehicles and non-road vehicles used in the performance of the Contract during periods of inactivity, and must comply with the anti-idling requirements imposed by any applicable federal, state, or local law.
5. The Contractor and any Subcontractor(s) may not use any of the following vehicles and equipment in the performance of the contract:
 - a. any heavy-duty diesel vehicle not meeting or exceeding the US EPA's emission standards for heavy-duty diesel vehicles for the 1998 engine model year, unless such vehicle is fitted with a verified diesel emission control retrofit device; or
 - b. any non-road vehicle or non-road equipment not meeting or exceeding the US EPA's Tier 1 Non-Road Diesel Standards, unless such vehicle or equipment is fitted with a verified diesel emission retrofit device.
6. Any heavy-duty diesel vehicles, non-road vehicles, and non-road equipment used in the performance of this Contract must incorporate such engine or retrofit technology so that the Contractor, through such engine or retrofit technology used directly by the Contractor and all subcontractors, shall have a minimum of 2.1 clean fleet score per a reporting period, as calculated by using the methodology described in MCC subsection 2-92-595(c)(5). Contractor may exclude from the calculation of the clean fleet score all of the heavy-duty diesel vehicles, non-road vehicles, and non-road equipment used in the performance of the contract during a reporting period that are owned or leased by any firm that the CPO has granted a clean fleet score annual waiver certificate pursuant to MCC subsection 2-92-595(f).

7. The City may conduct an audit of the Contractor or inspect any vehicle or equipment used in the performance of the Contract to ensure compliance with the requirements specified above. In the event that Contractor or any Subcontractor fails to utilize ULSD or fails to minimize idling or comply with anti-idling requirements, Contractor will be subject to liquidated damages of \$5,000 per day for each violation and each day of noncompliance will be a separate violation; provided, however, the damages will not exceed \$50,000 for any one vehicle or piece of equipment, as specified in Section 2-92-595(e) of the Municipal Code of Chicago. Such liquidated damages are imposed not as a penalty but as an estimate of the damages that the City will sustain from delay in completion of the project and inspection and inspection and other enforcement costs, as well as the resultant damages to the public health of its citizens, which damages by their nature are not capable of precise proof. The City is authorized to withhold and deduct from monies otherwise payable to the contractor the amount of liquidated damages due to the City.
8. Contractor understands that pursuant to Section 2-92-595(e)(6) of the Municipal Code of Chicago, any person knowingly making a false statement of material fact to any City department with respect to compliance with the contract provisions specified in Section 2-92-595(e) of the Municipal Code of Chicago may be fined not less than \$1,000 or more than \$5,000 for each statement.

XIX. INSURANCE, INDEMNITY AND BONDS

A. Indemnity

1. You must protect, defend, indemnify, and hold the City, its officers, officials, representatives, and employees (collectively the "Indemnitees"), harmless from and against any and all claims, damages, demands, injury or death, in consequence of granting this Contract or arising out of or being in any way connected with your performance under this Contract except for matters shown by final judgment to have been caused by or attributable to the negligence of Indemnitees. This indemnification obligation is effective to the maximum extent permitted by applicable law. This indemnity extends to all legal costs, including attorney fees, costs, liens, judgments, settlements, penalties, professional fees, and other expenses incurred by the City, including fines and penalties imposed by public bodies, and the reasonable settlement of such claims. This indemnification obligation is not limited by any amount of insurance required under this Contract. Further, the indemnification obligation contained in this section will survive the expiration or termination of this Contract.
2. You will be solely responsible for the defense of any and all claims, demands, or suits against Indemnitees, including claims by your employees, subcontractors, agents, or servants even though the claimant may allege that the Indemnitees were in charge of the Work or alleged negligence on the part of Indemnitees. The City will have the right, at its sole option, to participate in the defense of any such suit, without relieving you of your obligations under this section.
3. "Injury" or "damage" as these words are used in this section will be construed to include injury or damage consequent upon the failure of or use or misuse by you, your

Subcontractors, agents, servants, or employees, of any scaffolding, hoist cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not they are owned, furnished, or loaned by the Indemnitees.

4. You will promptly provide, or cause to be provided, to the Commissioner and City Corporation Counsel copies of all notices that you may receive of any claims, actions, or suits that may be given or filed in connection with your performance or the performance of any Subcontractor and for which the Indemnitees are entitled to indemnification under this Contract and to give the Indemnitees authority, information and assistance for the defense of any claim or action.

B. Contribution

To the extent permissible by law, you waive any limits on your liability that you would otherwise have by virtue of the Worker's Compensation Act 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 Worker's Compensation Act, the Illinois Pension Code or any other statute.

C. Admiralty

In addition, you waive the right to receive the benefits of or to invoke the protection afforded by all maritime statutory limitations of liability, including the Limitation of Vessel Owner's Liability Act, 48 U.S.C. § 183 *et seq.*, that could act to diminish your liability for any harm or damage arising from your performance of your obligations under the Contract in any manner or for all claims or other costs arising from or occasioned by your operations on any waterways, including Lake Michigan and the Chicago River. This provision is not intended to avoid or waive Federal jurisdiction under the applicable admiralty laws. This waiver extends only to the Indemnitees, and not to third parties seeking recovery for claims solely against you.

Without limiting your waiver, you specifically consent to pay all sums in respect of any claims against the Indemnitees and other costs suffered by the Indemnitees arising from or occasioned by your operations in or on waterways, including the following:

- a. Loss or damage to any other ship, vessel or boat caused proximately or otherwise by your vessel, or loss of the cargo or the other ship, vessel or boat;
- b. Loss of life or personal injury, or for any cost of life salvage;
- c. Loss or damage to any harbor, dock, building, graving or otherwise, slipway, pontoon, pier, quay, tunnel, jetty, stage, buoy, cables of any kind, or other fixed or movable object or property whatsoever;
- d. The cost of the removal, raising or destruction of the wreck of any vessel you employ in performing your obligations under the Contract;
- e. If a vessel is disabled or otherwise, the cost of towage or other salvage of any vessel you employ in performing your obligations under the Contract;
- f. Loss or damage to the bottom, banks, or shoreline of the waterway.

D. Performance and Payment Bonds

You must, before award of the Contract, deliver to the Chief Procurement Officer a performance and payment bond in the amount set forth in Book 2. Any performance bond that you provide must comply with the provisions of 30 ILCS 550/1 *et.seq.*, as amended, and of § 2-92-030 of the Municipal Code, as amended. It must also be in the form of the performance and payment bond form included in Book 2. The surety or sureties issuing the bond must be acceptable to the Comptroller and must have a Best's Key Rating Guide of "B+," Class XI or greater and be listed in the most recently published "Listing of Approved Sureties" of the U.S. Department of the Treasury Circular 570, with underwriting limitations in excess of the Contract Price. The bond must cover the warranty period required by the Contract.

In case of your neglect, failure, or refusal to provide satisfactory sureties when so directed within 10 days after such notification, pursuant to § 2-92-040 of the Municipal Code the Chief Procurement Officer may declare this Contract forfeit, but such forfeiture will not release you or your surety or sureties from any liability that may have accrued before the date of the forfeiture.

If at any time the surety or sureties, or any one of them, upon the bond become insolvent, or are, in the sole opinion of the Chief Procurement Officer, unsatisfactory, or unable to respond to damages in case of liability on such bond, the Chief Procurement Officer will notify you and direct that you furnish a bond issued by a satisfactory surety or sureties forthwith.

E. Insurance

You must procure and maintain at all times, at your own expense, through the completion of the warranty period, the types of insurance specified in Book 2 of the Contract, with insurance companies authorized to do business in the State of Illinois, covering all operations under this Contract, whether performed by you or by Subcontractors. Upon written request by the Commissioner, you must allow the Commissioner to review and copy any original insurance policies you are obligated to maintain under this policy.

You waive any and every claim or right of recovery from the City for all injuries and losses arising under this Contract or in any way related to the Work, including any claim for loss of or damage to the Work or to the contents of it, which injury, loss or damage is covered or is required to be covered by valid and collectible insurance policies, to the extent that such injury, loss or damage is recoverable under the insurance policies. As this waiver will preclude the assignment of any claim by subrogation (or otherwise) to an insurance company (or any other person), you must give each insurance company that has issued, or in the future may issue, your policies of insurance, written notice of the terms of this waiver, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of the waiver. You must require each Subcontractor to include similar waivers of subrogation in favor of the City.

The City reserves the right to change, modify or delete insurance requirements set forth in the Contract, including the right to request that you provide additional types of insurance.

XX. CLAIMS AND DISPUTES

A. General

Compliance with the provisions in this Article XX is a precondition to seeking judicial review of an adverse decision of the Chief Procurement Officer. **You must not withhold performance of and must prosecute any Work required by the Commissioner while your claim, including judicial resolution, if any, is pending. You must prosecute all of your Work including any disputed Work with the same diligence and effort as if no dispute existed.** Neither the Chief Procurement Officer's determination (see Section XX.C.3 below), nor the continued performance by either party, constitutes an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

B. Claims

1. This provision applies to all claims under this Contract, including those for time, money, or both.
2. Procedures. Within 14 days after a basis for claim arises, you must submit your claim in writing to the City's resident engineer or its project manager ("Commissioner's Representative). This written claim to the Commissioner's Representative will constitute "notice" to the City for purposes of determining initial timeliness of the claim; oral notice is insufficient. If you and the Commissioner's Representative are unable promptly (depending upon the complexity of the matter) to resolve the claim, you must forward your claim in writing to the Commissioner together with the documents listed in (a) through (d) below (collectively, "your documents"). You must include:
 - a. A general statement of the basis for the claim,
 - b. Reference to the applicable Contract provisions,
 - c. All records that support the claim, and
 - d. All documents that relate to it, such as correspondence, and that are reasonably necessary for the Commissioner's understanding to resolve the claim.

It is your responsibility to furnish your documents to the Commissioner at the time you forward the claim to him, as, with or without the supporting documentation, the Commissioner has 30 days to respond in writing to you after he has received the claim. Incomplete information may result in an adverse response. The response may be in the form of a contract modification.

If within the 30 days the Commissioner neither responds nor forwards the claim to the Chief Procurement Officer in lieu of responding, the claim will be considered denied, unless you and the Commissioner have agreed to extend the time for him to complete his response. The Commissioner may, at his sole option, forgo the opportunity to respond directly to your claim by referring it with all your documentation and a Request for Resolution of Dispute to the Chief Procurement Officer and supplying such additional documentation as the Chief Procurement Officer may require of him.

C. Disputes

1. Invoking Dispute Resolution Procedures. If you dispute the Commissioner's resolution or denial of your claim, or if your claim is deemed denied, you have 10 days to forward your claim and your documentation to the Chief Procurement Officer indicating to him that you are requesting resolution of a dispute and showing that you have complied with the preceding claims procedures. Your 10-day period to invoke dispute resolution by the Chief Procurement Officer is counted from the date the Commissioner's written resolution was sent to you, or, if he has not responded or forwarded the claim, from the date on which the time for the Commissioner's response lapsed.
2. Waiver. If you fail to file a Request for Resolution of Dispute with the Chief Procurement Officer within the 10-day period you will have waived your claim, the right to make the claim later, and the right to dispute its resolution or denial.
3. Dispute Procedures. Once the dispute resolution procedures are invoked, the Chief Procurement Officer will proceed to a final and binding decision under such rules and regulations as he from time to time promulgates. A copy of those rules and/or regulations is available through the Department of Procurement Services. The Chief Procurement Officer's decision will be implemented through a Contract Modification, if required, that will be made a part of the Contract with your signature or without it should you refuse to sign the Contract Modification. If either you or the Commissioner disagree(s) with the decision of the Chief Procurement Officer, the exclusive remedy is judicial review by a common law *writ of certiorari*. Unless such review is sought within 35 days of receipt of the Chief Procurement Officer's decision, all rights to seek judicial review are waived.

XXI. EVENTS OF DEFAULT AND TERMINATION

A. Chief Procurement Officer's Right

1. The Chief Procurement Officer may, at his sole discretion, exercise the right to send you notice under Sections XXI.C.1 or XXI.C.2. Whether to declare you in default is within the sole discretion of the Chief Procurement Officer and neither that decision nor the factual basis for it is subject to review or challenge under Article XI, "Claims and Disputes."
2. If the Chief Procurement Officer terminates this Contract under the provisions of Section XXI.C.1 or XXI.C.2, the Commissioner may use the material and equipment, whether owned or leased, that is within the scope of the Work or necessary for completion of the Work paid for by the City (whether located on or off the Work site), to complete the Work and you will receive no further payment until the Work is completed. If, however, the cost of completion exceeds the unpaid balance of the Contract, you must pay the difference to the City immediately upon demand.

B. Events of Default

Your failure to perform any of your obligations under the Contract, including one or more of the following, is an event of default:

1. Failure to begin the Work at the time specified;
2. Failure to perform the Work with sufficient workers and equipment or with sufficient materials to insure the completion of Work or any part of the Work within the time specified by the Contract;
3. Failure to perform the Work in accordance with the Contract;
4. Failure to promptly remove materials, repair, or replace Work that was or were rejected as defective or unsuitable;
5. Unauthorized discontinuation of the Work;
6. Insolvency, bankruptcy or assignment for the benefit of creditors that impairs your ability to pay Subcontractors or perform the Work;
7. Failure to pay Subcontractors or material suppliers;
8. Failure to carry on the Work in a manner acceptable to the Commissioner;
9. Failure to observe Federal, State, or local laws or regulations governing safety and security requirements, including all environmental requirements;
10. Failure to comply with any other term of this Contract that states an event of default or failure to comply with any term of this Contract in any material respect; and
11. Failure to identify disposal site(s) for materials, construction debris, soil and other wastes or to submit such information when requested by the Chief Procurement Officer.
12. Failure to notify City of change in information submitted in Contractor's original Economic Disclosure Statement ("EDS") and to submit a new EDS;
13. Default under any other City contract;
14. Violation of any City ordinance, even if unrelated to contract performance.

C. Remedies

If an event of default occurs, the Chief Procurement Officer, at his sole discretion, may send you notice of his intent to exercise remedies pursuant to the following:

1. **Opportunity to Cure:** The Chief Procurement Officer may provide you the opportunity to cure the default. If he does so, you must cure the default within 10 days after notice from the Chief Procurement Officer is given. If the Chief Procurement Officer receives written notification from the Commissioner that you have not cured the default within the 10-day cure period, the Chief Procurement Officer may at any time after that terminate the Contract, in which event the termination of the Contract is final and effective.
2. **Termination:** The Chief Procurement Officer may terminate the Contract. Written notification of the default and termination of the Contract will be provided to you and the bond company by the Chief Procurement Officer. The Chief Procurement Officer's decision and declaration of termination is final and effective.
3. In addition to the foregoing, upon an event of default as defined in Section XXI.B, "Events of Default," the City may invoke any or all of the following remedies:

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- a. The right of set-off against any payments due or to become due to you and against any retainage;
- b. The right to take over and complete the Work, or any part of it, either directly or through others. The City may use your Subcontractors, materials and equipment to complete the Work. If the City notifies you that it is invoking this remedy, all rights you may have in or under your subcontracts are assigned to the City, subject to the City's right to take assignment of all or only selected subcontracts, at the City's discretion. The sole obligation accepted by the City under such subcontracts is to pay for Work satisfactorily performed after the date of the assignment. In the event a conditional assignment has not been executed, you must execute, or cause to be executed, any assignment, agreement, or other document that may be necessary, in the sole opinion of the Corporation Counsel, to evidence or effect compliance with this provision. You must promptly deliver such documents upon the City's request. In the case of any subcontract so assigned and accepted by the City, you remain liable to the Subcontractors for any payment already invoiced to and paid by the City, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortious conduct, or any other act or omission, or breach of Contract, by you, your officers, employees, agents, and other Subcontractors, arising before the date of assignment to the City, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. You must notify your Subcontractors of these requirements;
- c. In the event of termination, all costs and changes incurred by the City, together with the cost of completing the Work, are deducted from any moneys due or that may become due to you. When the expense incurred by the City exceeds the sum that would have been payable under the Contract, you and the surety are liable and must pay to the City the amount of the excess;
- d. The right to terminate the Contract as to any or all of the Work yet to be performed;
- e. The right of specific performance, an injunction, or any other appropriate equitable remedy, as may be applicable;
- f. The right to money damages, including all expert witness or other consultant fees, court costs, and attorneys' fees that the City may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an event of default under this Contract;
- g. The right to withhold all or any part of your compensation;
- h. The right to terminate any or all of any other contracts that you may have with the City; and
- i. The right to deem you non-responsible in future contracts to be awarded by the City.

D. Nonexclusivity 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 hereafter, at law, or in equity. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor constitutes a waiver of any event of default or acquiescence in it, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

E. Adjudication of Termination

If the Contract is terminated by the City for cause and it is subsequently determined by a court of competent jurisdiction that the termination was without cause, the termination will thereupon be deemed under Section XXI.F, "Early Termination," and the provisions of Section XXI.F, "Early Termination," apply.

F. Early Termination

1. The City, through the Chief Procurement Officer, may terminate your Work by written notice stating the effective date of the termination. Immediately upon receipt of the notice, you must provide similar written notice to the affected Subcontractor(s), whereupon you and Subcontractor(s) must, except for services necessary for the orderly termination of the Work.
 - a. Stop all Work and place no further order or subcontracts for materials, services, equipment or supplies;
 - b. Assign to the City, in the manner and to the extent directed, all of your rights under Work orders, purchase orders and subcontracts relating to the portion of the Work that has been completed;
 - c. Terminate Work orders, purchase orders and subcontracts outstanding to the extent that they relate to the Work and are not assigned to the City;
 - d. Take any action necessary to protect property in your possession in which the City has or may acquire an interest; and
 - e. Take any other action toward termination of the Work that the City may direct.
2. If all or a portion of your Work is terminated under this Section, "Early Termination," you are entitled to payment of those costs relating to the completed portion of the Work. No payment will be made for Work not actually performed. Deductions will be made by the City for any amounts previously paid to you and for any amounts that may be due the City, or that the City may offset or withhold by the terms of this Contract. Thus, the City will pay you, subject to the limitations set forth in this Contract, the sum of the following costs:
 - a. That portion of the Contract Price related to the Work you completed immediately before notice of termination less the payments for progress or changes previously made; and

- b. Expenses incurred for which you are liable as the result of your termination of respective Work orders, purchase orders or subcontracts related to the notice of termination. The total amount of all payments to you must not, in any event, exceed the proportion that the Work actually performed (including materials delivered to the Project site minus credits for returned goods or canceled orders) at the date of termination bears to the entire Work to be performed under this Contract. Any payment to you under this subsection will be made in accordance with the provisions of Article XII, "Payments."
3. After receipt of a notice of termination under this Section XXI.F, "Early Terminations," you must submit to the Commissioner your final invoice in the form required, with supporting documentation. The Commissioner may require certified payrolls, receipts and other proof of expenditures. The final invoice must be submitted promptly, but in no event more than 60 days after the effective date of termination. Failure to submit the final invoice within 60 days after the effective date of termination constitutes a waiver of the final invoice.

G. Non-Appropriation

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 you of that occurrence and this Contract will 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 you under this Contract beyond those amounts appropriated and budgeted by the City to fund payments under it.

XXII. COMPLIANCE WITH ALL LAWS

A. Contractor Must Comply with All Laws

Contractor must observe and comply with all Applicable Laws, in effect now or later and whether or not they appear in the Agreement, including those specifically referenced herein or in any of the Contract Documents. 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 do so. Contractor is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

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, 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.

B. 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:

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).

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. 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. 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.

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.

6. Incorporation of Provisions

The contractor will include the provisions of above paragraphs 1, "Compliance With Regulations" through 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.

7. Other Non-Discrimination Requirements

a. Illinois Human Rights Act

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.

b. 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.

c. 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.

C. Business Relationships with Elected Officials

Pursuant to Section 2-156-030(b) of the Municipal Code, 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 Section 2-156-030 of the Municipal Code 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 Chapter 2-156 of the Municipal Code.

D. Inspector General and Legislative 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 or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to Chapter 2-56 or 2-55 of the Municipal Code, respectively. Contractor understands and will abide by all provisions of Chapters 2-56 and 2-55.

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

E. Governmental Ethics Ordinance

As required by § 2-156-120 of the Municipal Code, no payment, gratuity or offer of employment shall 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.

F. False Statements

False statements made in connection with this Agreement, 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 Agreement (each a "Disclosure Misrepresentation"). Any such Disclosure Misrepresentation renders the Agreement voidable at the option of the City, notwithstanding any prior review or acceptance by the City of any materials containing a Disclosure Misrepresentation. In addition, the City may debar Contractor, assert any contract claims or seek other civil or criminal remedies as a result of a Disclosure Misrepresentation (including costs of replacing a terminated Contractor pursuant to Chicago Municipal Ordinance 1-21-010).

G. Americans with Disabilities Act

Contractor must perform all construction or alteration that Contractor undertakes in connection with this Contract in compliance with all federal, state and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including: Americans with Disabilities Act, P.L. 101-336 (1990) and the Uniform Federal Accessibility Standards ("UFAS") or the American with Disabilities Act ("ADA") and; the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.* (1991), and the regulations promulgated with them. If the above cited standards are inconsistent, Contractor must comply with the standard providing greater accessibility.

H. 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.

I. Licensing of General Contractors

Important: The failure to comply with the provisions of Chapter 4-36 of the Municipal Code ("Chapter 4-36") may result in ineligibility to bid, inability to perform (or continue) to work, imposition of substantial fines, and/or in the City's revoking the Bidder's "general contractor" license. Information about Chapter 4-36 and application forms are available on the City's website, www.cityofchicago.org. A copy of the entire ordinance is provided in Book 2 of this contract.

As stated elsewhere in the specification, the City reserves the right to reject any or all bids.

Bidder must be in compliance with the requirements of Chapter 4-36, in the appropriate license class commensurate with the size of this project, if the license is required for the scope of work, **at the time Bidder submits its bid** and, if it is awarded a contract, throughout the term of the contract.

Contractor's failure to be licensed as a "general contractor" at all times throughout the term of the contract, if the license is required for the scope of work, is an **event of default** under the Agreement and the City may exercise any and all rights and remedies permitted under the contract, at law, or in equity.

J. Buy America

Contractor must ensure that, to the extent applicable, Work provided under this Contract complies with any Buy America provisions of the federal government and/or any similar provisions of the State or City.

K. Steel Products

Unless otherwise provided in the Steel Products Procurement Act, 30 ILCS 565/1 *et seq.*, steel products used or supplied in the performance of this contract or any subcontract to this contract must be manufactured or produced in the United States. Knowing violation of this law may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

L. 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. The opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Contract, at law or in equity.

M. Deemed Inclusion Provisions required by Applicable Law to be inserted in the Agreement are deemed inserted in the Agreement whether or not they appear in the Agreement or, upon application by either party, the Agreement will be amended to make the

insertion; however, in no event will the failure to insert the provisions before or after the Agreement is signed prevent its enforcement.

N. Firms Owned or Operated by People with Disabilities

The City encourages Contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by Federal or State law.

O. 2014 City Hiring Plan Prohibitions

1. 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.
2. 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.
3. 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.
4. In the event of any communication to Contractor by a City employee or City official in violation of paragraph 2 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.

P. 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).

Q. 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.

R. 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:

1. 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. 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.

Failure by the Contractor or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be a default for which no cure is available and grounds for termination of this Contract.

2. 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.

S. 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.

T. 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.

U. Electronic Mail Communication

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

XXIII. MISCELLANEOUS

A. Counterparts

This Contract is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

B. Modifications

No changes, modifications, cancellation, or discharge of this Contract, or any part of it, is valid unless in writing and signed by the parties to it, or their respective successors and assigns.

C. No Waiver of Legal Rights

1. The City will not be precluded or estopped from showing the true amount and character of the Work performed and materials furnished by you, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The City will not be precluded or estopped from recovering from you and your sureties such damages as the City may sustain by reason of your failure to comply with the terms of the Contract.
2. 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 Work, nor any extension of time, nor any possession taken by the City, will operate as a waiver by the City of any portion of

the Contract, or of any power reserved in it or any right of the City to damages provided in it. A waiver of any breach of the Contract does not constitute a waiver of any other or subsequent breach.

3. **Miscellaneous Provisions:** Whenever under this Contract, the City by a proper authority waives your performance in any respect or waives a requirement or condition to either the City's or your performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not deemed a waiver forever or for subsequent instance of the performance, requirement, or condition. No such waiver may be construed as a modification of this Contract regardless of the number of times the City may have waived the performance, requirement, or condition.

D. Contractor's Governing Law

This Contract is governed in accordance with the laws of the State of Illinois without regard to choice of law principles. You irrevocably submit, and will cause your 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. You consent to service of process on you, 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 you, or by personal delivery on any of your officers, directors, or managing or general agents.

E. Consent to Service of Process and Jurisdiction

All judicial proceedings brought against you with respect to this Contract may be brought in (i) any court of the State of Illinois of competent jurisdiction; and (ii) any Federal court of competent jurisdiction located within the boundaries of the Federal court district of the Northern District of Illinois, and by execution and delivery of this Contract, you accept, for yourself and in connection with your properties, generally and unconditionally, the exclusive jurisdiction of those courts, and irrevocably agree to be bound by any final judgment rendered by them from which no appeal has been taken or is available. You designate and appoint the representative identified on the signature page to this Contract under the heading "Designation of Agent for Service Process" as your agent in Chicago, Illinois to receive on your behalf service of all process in any such proceedings in the court (which representative must be available to receive the service at all times), the service being acknowledged by the representative to effective and binding service in every respect. The agent may be changed only upon the giving of written notice by you 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 and is retained or employed by you. You irrevocably waive any objection (including any objection of the laying of venue or based on the grounds of *forum non conveniens*) which you may now or later have to bring any action or proceeding with respect to this Contract in the jurisdiction set forth above. Nothing in this section affects the right to serve process in any other manner permitted by law or limits the right of the City to bring proceedings against you in the courts of any other jurisdiction.

F. Contractor Cooperation

You must act in good faith in the performance of this Contract and co-operate with the City and any other City contractors at the site to assure timely completion of the Work. You must implement such measures as may be necessary to ensure that your staff and your Subcontractors are bound by the provisions of this Contract.

G. Joint and Several Liability

If you, or your successors or assigns, if any, are comprised of more than one individual or other legal entity (or a combination of them), then each and every obligation or undertaking stated in this Contract that you are to fulfill or perform is the joint and several obligation or undertaking of each such individual or other legal entity.

H. No Third Party Beneficiaries

Except as may otherwise be provided in this Contract, this Contract is solely for the benefit of the parties and nothing in this Contract is intended to create any third party beneficiary rights for Subcontractors or other third parties.

I. Notices

Notices, unless expressly provided for otherwise in this Contract, must be in writing and must be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

1. If to the City: Commissioner, (Addresses of Department set forth in Book Two)
2. With Copies to: The Chief Procurement Officer, City Hall, 121 North LaSalle, Room 403, Chicago, IL 60602;
3. If to you: The address identified on your Proposal; and
4. With Copies to: Your bonding company.

Notices delivered by mail are deemed effective three days after mailing in accordance with this Section. Notices delivered personally are deemed effective upon receipt. Refusal to accept notice has the same effect as if notice were delivered. The addresses stated in this Contract may be revised without need for modification or amendment of this Contract, as long as written notification is given in accordance with this Section.

J. Authority

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

2. Consents and Approvals: Unless otherwise expressly stated in this Contract, any consents and approvals to be given by the City are made by the Commissioner.

K. Software License Agreements

The City reserves the right to negotiate software license agreements directly with the software supplier.

L. Title VI Solicitation Notice

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

XXIV. NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time-tables	Goals for minority participation for each trade	Goals for female participation in each trade
	19.6%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

As used in this Notice, and in the contract resulting from this solicitation, the "covered area" includes the City of Chicago, Cook, DuPage, Kane, Lake, McHenry, and Will Counties (Standard Metropolitan Statistical Area).

XXV. EQUAL EMPLOYMENT OPPORTUNITY

Contractor's federal Equal Opportunity obligations, including but not limited those of 41 CFR Part 60-2 and Executive Order 11246 are set forth in FHWA Form 1273. Contractor's attention is particularly directed to the provisions under II. "Nondiscrimination."

XXVI. OTHER FEDERAL PROVISIONS

A. Interest of Members of or Delegates to the United States Congress

In accordance with 41 USC § 22, you will not admit any member of or delegate to the United States Congress to any share or part of the Contract or any benefit derived therefrom.

B. False or Fraudulent Statements and Claims

1. You recognize that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC § 3081 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to your actions pertaining to the Contract. Accordingly, by signing the Contract, you certify or affirm the truthfulness and accuracy of any statement you have made, you make, or you may make pertaining to the Contract, including any invoice for your services. In addition to other penalties that may be applicable, you also acknowledge that if you make a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on you to the extent the federal government deems appropriate.

2. You also acknowledge that if you make a false, fictitious, or fraudulent claim, statement, submission, or certification to the City or federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 USC § 5307, the Government reserves the right to impose on you the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1), to the extent the federal government deems appropriate.

C. Federal Interest in Patents

1. General. If any invention, improvement, or discovery of yours is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, you must notify City immediately and provide a detailed report.

2. Federal Rights - Unless the federal government later makes a contrary determination in writing, the rights and responsibilities of the City, you, and the federal government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations, including any waiver of them; and irrespective of your status or the status of any Subcontractor at any tier (e.g., a large business, small business, non-profit organization, institution of higher education, individual), you will transmit to the federal government those rights due the federal government in any invention resulting from the Contract.

D. Federal Interest in Data and Copyrights

1. Definition

The term "subject data" used in this Section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. Examples include computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Contract administration.

2. Federal Restrictions

The following restrictions apply to all subject data first produced in the performance of the Contract. Except as provided in the Contract and except for your own internal use, you may not publish or publicly reproduce subject data in whole or in part, or in any manner or form, nor may you authorize others to do so, without the written consent of the City and the federal government, until such time as the federal government may have either released or approved the release of such data to the public.

3. Federal Rights in Data and Copyrights

In accordance with subparts 34 and 36 of the Common Rule, the City and the federal government reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for City or federal government purposes, the types of subject data described below. Without the copyright owner's consent, the City and federal government may not extend their license to other parties.

- a. Any subject data developed under the Contract or subagreement financed by a federal Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and
- b. Any rights of copyright in which you purchase ownership with federal assistance.

4. Special Federal Rights for Planning Research and Development Projects

When the federal government provides financial assistance for a planning, research, development, or demonstration project, its general intention is to increase public knowledge, rather than limit the benefits of the project to participants in the project. Therefore, unless the federal government determines otherwise, if this is a planning, research, development, or demonstration project, you consent, in addition to the rights in data and copyrights set forth above, that the City or federal government may make available to any third party either a license in the copyright to the subject data or a copy of the subject data. If the project is not completed for any reason whatsoever, all data developed under the project will become subject data and must be delivered as the City or federal government may direct. This subsection, however, does not apply to adaptations of automatic data processing equipment or previously existing software programs for the City's use whose costs are financed with federal transportation funds for capital projects.

5. Hold Harmless

Unless prohibited by state law, upon request by the City or the federal government, you must hold harmless the City and the federal government and their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by you of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction,

delivery, use, or disposition of any data furnished under the Contract. You are not required to indemnify the City or federal government for any such liability arising out of the wrongful acts of employees or agents of the City or federal government.

6. Restrictions on Access to Patent Rights

Nothing contained in this Section on rights in data implies a license to the City or federal government under any patent or is to be construed as affecting the scope of any license or other right otherwise granted to the City or federal government under any patent.

7. Application on Materials Incorporated into Project

The requirements of subsections XXVI.D.2 , XXVI.D.3, and XXVI.D.4 of this Section do not apply to material furnished by the City and incorporated into the Work.

E. No Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by federal statute or regulations, you will comply with the requirements of 49 USC ' 5323(h)(2) by refraining from using any federal assistance to support subcontracts procured using exclusionary or discriminatory specifications.

F. Cargo Preference - Use of United States Flag Vessels

You must comply with U.S. Maritime Administration regulations, "Cargo-Preference -- U.S. Flag Vessels," 49 CFR Part 381, and include the clauses required by those regulations, modified as necessary to identify the affected parties, in each subcontract or sub-agreement involving equipment, materials, or commodities suitable for transport by ocean vessel.

G. Fly America

You must comply with 49 USC Section 40118, and related regulations at 41 CFR Part 301-10, regarding use of United States air carriers, and included clauses requiring your Subcontractors to comply with the requirements of 49 USC Section 40118, and related regulations at 4 CFR Part 52, in all of your subcontracts.

H. No Federal Government Obligations to Third Parties

Absent the federal government's express written consent, the federal government is not subject to any obligations or liabilities to any contractor or any other person not a party to the Grant Agreement or Cooperative Agreement between the City and the federal government, which is a source of funds for this Contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, agreement, or contract, the federal government continues to have no obligations or liabilities to any party, including you.

I. Allowable Costs

Notwithstanding any compensation provision to the contrary, your compensation under this Contract is limited to those amounts that are allowable and allocable to the Contract in accordance with OMB Circular A-87 and the regulations in 49 CFR Part 18. To the extent that an audit reveals that you have received payment in excess of such amounts, the City may offset such excess payments against any future payments due to you and, if no future payments are due or if future payments are less than such excess, you must promptly refund the amount of the excess payments to the City.

J. Contract Work Hours and Safety Standards Act

If applicable according to their terms, you must comply and assure compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC " 327 through 333, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5; and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926. In addition to other requirements that may apply:

1. In accordance with sections of the Contract Work Hours and Safety Standards Act, as amended, 40 USC " 327 through 332, you must assure that, for the Contract, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for Work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.
2. In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 USC §333, you must assure that no laborer or mechanic working on a construction contract is required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with US DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

K. Seismic Safety

If this Contract is for the construction of a building or an addition thereto, you must apply the requirements of US DOT regulations applicable to seismic safety requirements for US DOT assisted construction projects at 49 CFR Part 41, (specifically, 49 CFR ' 41.120), and any implementing guidance the federal government may issue, to the construction of any new building and to additions to any existing building.

L. Buy America

You must ensure that any Work performed under this Contract complies with the "Buy America" regulations of the FHWA, as set forth in 23 CFR Part 635.410, which generally require that all manufacturing processes for steel and iron products to be incorporated in a construction project, including application of a coating, must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

XXVII. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

A. As used in these specifications:

1. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;

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2. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

3. "Employer Identification Number" means the federal Social Security number used on the Employer's Quarterly federal Tax Return, U.S. Treasury Department Form 941.

4. "Minority" includes:

a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

d. American Indian or Alaskan Native (all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

B. Whenever you, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, you must physically include in each subcontract in excess of \$10,000 the provisions of these specification and the Notice that contains the applicable goals for minority and female participation and that is set forth in the solicitations from which this contract resulted.

C. If you are participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) must be in accordance with the Plan for those trades that have unions participating in the Plan. You must be able to demonstrate your participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

D. You must implement the specific affirmative action standards provided in paragraphs XXVI.G.1 through XXVI.G.16 of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization you should reasonably be able to achieve in each construction trade in which you have employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract must apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. You are expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom you have a collective bargaining agreement, to refer either minorities or women excuses your obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, you must employ such apprentices and trainees during the training period, and you must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

G. You must take specific affirmative action to ensure equal employment opportunity. The evaluation of your compliance with these specifications will be based upon your effort to achieve maximum results from your actions. You must document these efforts fully, and must implement affirmative action steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which your employees are assigned to work. You, where possible, will assign two or more women to each construction project. You must specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out your obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when you or your unions have employment opportunities available, and maintain a record of the organization's responses.

3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If the individual was sent to the union hiring hall for referral and was not referred back to you or the union or, if referred, not employed by you, this must be documented in the file with reason therefor, along with whatever additional actions you may have taken.

4. Provide immediate written notification to the director when the union or unions with which you have a collective bargaining agreement have not referred to you a minority person or woman that you sent, or when you have other information that the union referral process has impeded your efforts to meet your obligations.

5. Develop on-the-job training opportunities and/or participate in training programs for the area that expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to your employment needs, especially those programs funded or approved by the Department of Labor. You must provide notice of these programs to the sources compiled under G.2. above.

6. Disseminate your EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting you in meeting your EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy

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with all management personnel and with all minority and female employees at least once a year and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

8. Disseminate your EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing your EEO policy with other contractors and Subcontractors with whom you anticipate doing business.

9. Direct your recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving your recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, you must send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and your obligations under these specifications are being carried out.

14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities must be provided to assure privacy between the sexes.

15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

16. Conduct a review, at least annually of all supervisor's adherence to and performance under your EEO policies and affirmative action obligations.

H. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations (G.1. through 16.). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which you are a member and participant, may be asserted as fulfilling any one or more of its obligations under G.1. through 16 of these Specifications but only if you actively participate in the group, make every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensure that the concrete benefits of the program are reflected in your minority and female workforce participation, make a good faith effort to meet your individual participation, make a good faith effort to meet your individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of you. The obligation to comply, however, is yours and failure of such a group to fulfill an obligation is not a defense for your noncompliance.

I. A single goal for minorities and a separate single goal for women have been established. You, however, are required to provide equal employment opportunity and to make affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, you may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though you have achieved its goals for women generally, you may be in violation of the Executive Order if a specific minority group of women is underutilized).

J. You must not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

K. You must not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

L. You must carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties is in violation of these specifications and Executive Order 11246, as amended.

M. You, in fulfilling your obligations under these specifications, must implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G. of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If you fail to comply with the requirements of the Executive Order, the implementing regulations, or these Specifications, the Director must proceed in accordance with 41 CFR 60-4.8.

N. You must designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions of this Section as may be required by Government and to keep records. Records must at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an

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easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors are not required to maintain separate records.

O. Nothing provided in this Contract may be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

XXVIII. Special Conditions Regarding Disadvantaged Business Enterprise Commitment

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CITY OF CHICAGO
Department of Procurement Services
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**DBE SPECIAL CONDITIONS FOR FAA/FTA/FHWA (IDOT) FUNDED CONTRACTS
CONSTRUCTION, SERVICES, TASK ORDER SERVICES, AND SUPPLY**

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: See percentage set out in Book 2.

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.

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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

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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.

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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:

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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

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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

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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 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.

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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

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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;

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- 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.

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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

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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;

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- 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.

5. 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.

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6. 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, provided that this paragraph 1.11.B shall apply only to contracts funded by the Federal Aviation Administration. See 1.12, "Arbitration."

C. 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

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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.

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1.15. 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: Tracye Smith
(312)263-0105

1.16. 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.

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XXIX. FHWA-FORM 1273

Contractor is required to adhere to FHWA-1273 and any changes that may be made to these requirements. Information may be found at: <http://www.fhwa.dot.gov/programadmin/contracts/1273/>

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- | | |
|--|--|
| <ul style="list-style-type: none">I. GeneralII. NondiscriminationIII. Nonsegregated FacilitiesIV. Davis-Bacon and Related Act ProvisionsV. Contract Work Hours and Safety Standards Act ProvisionsVI. Subletting or Assigning the ContractVII. Safety: Accident PreventionVIII. False Statements Concerning Highway ProjectsIX. Implementation of Clean Air Act and Federal Water Pollution Control ActX. Compliance with Governmentwide Suspension and Debarment RequirementsXI. Certification Regarding Use of Contract Funds for Lobbying | <ul style="list-style-type: none">2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. |
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ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

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The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO

obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

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c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants

without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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

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this contract or such other remedy as the contracting agency deems appropriate.

11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

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(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency 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 the contractor under this contract, or any other Federal

contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the

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FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S.

Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the

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provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such

disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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 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.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, 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.) of this section, 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.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency 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 moneys payable on account of work

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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.) of this section.

4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors 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.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards

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and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder,

proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction

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under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as

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subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. 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 clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is

presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. 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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.