

**Request for Qualifications (RFQ)
Pre-Qualification for
Professional Transit Design and Transit Construction Engineering Services**

Project Category 1: Transit Station Design (Architectural Finishes)
Project Category 2: Elevated Transit Station Design
Project Category 3: Subway Transit Station Design
Project Category 4: Construction Engineering for Transit Projects
Project Category 5: Streetscape, Riverwalk, and Urban Landscape
Project Category 6: Transit Facilities

Specification No.: TRANSIT

Required for use by:
CITY OF CHICAGO
(Department of Transportation, Bureau of Bridges and Transit)
Issued by:
CITY OF CHICAGO
(Department of Purchases, Contracts and Supplies)

**ONE (1) ORIGINAL AND FOUR (4) COPIES
OF THE RESPONSE TO BE SUBMITTED**

All of the responses must be addressed and returned to:

Jamie L. Rhee, Chief Procurement Officer
Department of Procurement Services
City Hall-Bid & Bond-Room 301
121 N. LaSalle Street
Chicago, Illinois 60602

This is an open Process.
Submittals received will be evaluated periodically thereafter, until further notice.

Responses must be submitted in sealed envelope(s) or package(s). The outside of the package or envelope must clearly indicate the name, "**RFQ Pre-Qualification for Professional Transit Design and Transit Construction Engineering (Project Category Specific)**", the specification number and the time and the date specified for receipt. The name and address of the Respondent must also be clearly printed on the outside of the envelope(s) or package(s).

RAHM EMANUEL
MAYOR

JAMIE L. RHEE
CHIEF PROCUREMENT OFFICER

Edward Anderson, Contract Negotiator (312) 744-6118

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GENERAL INVITATION

The City of Chicago invites the submission of responses to provide **Professional Transit Design and Transit Construction Engineering Services** for the City of Chicago, Department of Transportation ("City"). If your firm has demonstrated experience in the areas specified in the Scope of Services, and you are interested in making your services available to the City of Chicago, you are requested to respond to this "Request for Qualification."

One Original and 4 copies of the response must be signed by an authorized representative, enclosed in sealed envelope(s) or package(s), addressed and submitted to the Office of the Chief Procurement Officer, Bid & Bond, Room 301, 121 North LaSalle Street, City Hall, Chicago, Illinois 60602; if hand carried, place in the depository located in the Bid & Bond Room at City Hall, Room 301 by **4:00 P.M., Central Time determined solely by the clock located in the Bid & Bond Room on DATE**. Copy 1 of 5 must be marked **ORIGINAL**.

Submittals received will be evaluated periodically thereafter, until further notice.

Important Note: The City of Chicago accepts no responsibility for the timely delivery of materials, and Respondents are solely responsible for acquiring necessary information, addenda and/or materials.

CAUTION: LATE SUBMITTALS – When responses are delivered by mail or messenger to the Chief Procurement Officer, the Respondent is responsible for their delivery **BEFORE** the due date and time. If delivery is delayed beyond the date and hour set for the receipt, responses so delayed will not be considered and will be returned unopened at the expense of the Respondent.

Any false statement(s) made by the Respondent(s) will void the response and eliminate the Respondent(s) from further consideration.

The Chief Procurement Officer reserves the right to reject any submittal which deviates from the submittal requirements. No additional or missing documents will be accepted after the due date and time except as may be requested by the Chief Procurement Officer.

For procurement information, contact Edward Anderson, Contract Negotiator at (312) 744-6118. For Request for Qualification ("RFQ") document, call Bid & Bond at (312) 744-9773.

The City of Chicago, Directory of Certified Minority Business Enterprises and Women Business Enterprises and Disadvantaged Business Enterprises is available in the Bid & Bond Room, Room 301, City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 or call (312) 744-9773.

COLLECT CALLS NOT ACCEPTED

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Attachment 1. Forms

Form A	Related Experience of Firm
Form B	Related Experience of Key Personnel
Form C	Current and Future Commitments of Key Personnel
Form D	Key Technical Personnel and Key Support Personnel Responsibility Matrix and Local Availability

Attachment 2. Special Conditions/Affidavits

Special Conditions Regarding MBE/WBE/DBE Enterprise Commitment
(for informational purposes only)

Attachment 3. Professional Service Agreement Standard Terms and Conditions - (Revised January 17, 2006)

City Funds
FHWA and FTA Funds

Request for Qualification ("RFQ")
CDOT BUREAU OF BRIDGES AND TRANSIT
REQUEST FOR PRE-QUALIFICATIONS OF CONSULTANTS
TRANSIT DESIGN
AND TRANSIT CONSTRUCTION ENGINEERING SERVICES

for

- Project Category 1: Transit Station Design (Architectural Finishes)
- Project Category 2: Elevated Transit Station Design
- Project Category 3: Subway Transit Station Design
- Project Category 4: Construction Engineering for Transit Projects
- Project Category 5: Streetscape, Riverwalk and Urban Landscape
- Project Category 6: Transit Facilities

I. SCOPE OF SERVICES

A. INTRODUCTION

The Chicago Department of Transportation, Bureau of Bridges and Transit seeks Request for Qualifications ("RFQ") responses from interested Transit Design and Transit Construction Engineering firms ("Respondents" or "Consultants") to participate in the City's Pre-Qualification Program.

Certified MBE/WBE/DBE firms are encouraged to respond to this RFQ to augment Target Market opportunities, within the Pre-qualified Program.

Pre-qualification will be for the tasks of Design Consultant ("DC"), responsible for the preparation of Phase I Preliminary Design and Phase II Final Design Documents for construction, and Construction Engineer ("CE") responsible for Phase III Construction Engineering Services.

This RFQ is divided into 6 distinct project categories as indicated in the Project Category Descriptions attached here. Respondents may submit responses for any one project category or combination of project categories. The City, at its own discretion, may elect to pre-qualify a Respondent for any project category or combination of project categories for which the Respondent has submitted its qualifications.

The services contemplated are professional in nature. The selected Respondent, acting as an individual, partnership, corporation or other legal entity, must be of professional status, licensed to perform in the State of Illinois and licensed for all applicable professional discipline(s) requiring licensing and will be governed by the professional ethics in its relationship to the City. All reports, information or data prepared or assembled by the Respondent are confidential in nature, and the Respondent must not make them available to any individual or organization, except the City, without the prior written approval of the City.

The Respondent must be financially solvent and each of its members if a joint venture, its employees, agents, sub-contractors or subconsultants of any tier must be competent to perform the services required under this RFQ document ("Services").

Protests. The Respondent must submit any protests or claims regarding this solicitation to the office of the City's Chief Procurement Officer located at City Hall, Room 403, 121 N. LaSalle Street, Chicago Illinois 60602. A pre-submittal protest must be filed no later than 5 days before the due date, a pre-award protest must be filed no later than 10 days after the due date, and a post-award protest must be filed no later than 10 days after the award of the contract.

All protests and claims must set forth the name and address of the protester, the specification number, the grounds for the protest or claim and the course of action that the protesting party desires that the Chief Procurement Officer take. Copies of the Protest Procedures are available in the Bid & Bond Room.

B. PRE-QUALIFICATION PROGRAM

The City of Chicago has implemented a pre-qualification process for projects related to Transit Design and Construction Engineering Services.

RFQ Process. Consultants interested in becoming pre-qualified for these types of projects should respond to this RFQ. Evaluation will be performed by representatives of CDOT and the Department of Procurement Services ("DPS") based on the criteria listed in the Evaluation Criteria of this RFQ. The Chief Procurement Officer may request additional information to complete the evaluation process. The additional information may be required in the form of presentations, meetings or documentation from Respondents. Once the evaluation is completed, the Commissioner will recommend to the Chief Procurement Officer a list of pre-qualified firms based on the categories listed in this RFQ. Upon concurrence by the Chief Procurement Officer, Respondents will be notified of the results of the evaluation process.

MBE/WBE/DBE. Firms seeking pre-qualification are encouraged to submit the qualifications for a pool of certified MBE/WBE/DBEs that the prime firm plans to use to fulfill the MBE/WBE/DBE requirements. Certified MBE/WBE/DBE firms are also encouraged to respond to this RFQ to augment the Target Market opportunities within the pre-qualified group.

Pre-qualified firms. Pre-qualification will be effective until further notice, or a new RFQ for these types of projects is issued or the Consultant's Services are terminated due to poor performance. Pre-qualified firms will be required to submit additional documentation, which will include but not be limited to: Disclosure Affidavit and Certificates of Insurance. Upon approval of these documents by the City, pre-qualified firms will be eligible to participate in the Request for Proposals ("RFP") process. These forms will require re-submission on an annual basis.

RFP Process. Upon identification of a project by the City, the required information will be forwarded to DPS. DPS will solicit proposals from 3 or more pre-qualified firms. The RFP will include a general description of the scope of Services, the source of funding, type of project, the due date and time of proposals, the terms and conditions that apply and any other appropriate information. At a minimum, proposals must include the Respondent's approach to perform and complete the Services, a schedule for the completion of the Services, a list of firms that will participate (prime and subconsultants including MBE/WBE/DBE) and a staffing plan. The City reserves the right to request a cost proposal by task (in a separate sealed envelope).

Due Date of Proposals. Pre-qualified firms must be able to prepare proposals within one to three weeks depending on the complexity of the project. The due date for proposals will be indicated in the RFP.

RFP Process for FTA Funded Projects. Federal Transit Authority ("FTA") funded projects will be publicly advertised for a period of 30 days or more. The public solicitation will state that all Respondents must be pre-qualified in the given project category. Additionally, the solicitation will state that any firms responding to the solicitation and not currently pre-qualified must submit qualifications under this pre-qualification requirement prior to or on the deadline date stated in the RFP advertisement.

Successful Proposal. The selected Respondent will be required to submit the Disclosure of Retained Parties and Schedules C- and D-1 regarding MBE/WBE or DBE participation once the cost proposal has been finalized. After a

contract is awarded, CDOT will issue a Notice to Proceed authorizing the Services.

Contracting. An expeditious contracting process has been designed along with this pre-qualification process. Therefore, exceptions to the standard contract terms will not be accepted. If the City desires to make changes to the standard terms and conditions of the contract or a change is necessary due to legal requirements caused by changes in the law or its interpretation, pre-qualified firms will be notified.

Amendments. It is the City's intention to minimize amendments. However, if amendments are necessary, they will be processed following the City amendment process.

Changes to Pre-Qualification Information. Any changes to the pre-qualification information must be submitted to the Chief Procurement Officer. The City reserves the right to change the pre-qualification status of any firm that fails to submit the necessary information in a timely manner.

Performance Evaluation. Upon completion of the Services, the Commissioner or his authorized designee will evaluate Consultant's performance. Performance evaluations will be forwarded to the Chief Procurement Officer. Performance information may be used in future pre-qualification processes.

Cancellation/Change. This process may be modified in its entirety or in part as directed by the Chief Procurement Officer at any time or may be canceled if the best interests of the City are served. The City is not responsible for any costs incurred by any of its participants in the preparation of documentation or participation in meetings. If the process is modified, the Chief Procurement Officer will issue a notice indicating the changes or instructions on how to obtain the changes.

Other Procurements. The City reserves the right to go outside this process to seek the Services and or qualifications of firms for other projects or projects of this nature if in the opinion of the Chief Procurement Officer, the City's best interests are served or to meet other requirements.

C. SERVICES TO BE PERFORMED

The requirements for design phase Services will vary according to the specific needs of each project. It is, however, anticipated that the following tasks and requirements will generally be expected for each project.

The DC will be under the direct supervision of CDOT Bureau of Bridges and Transit Project Managers. CDOT will have principal responsibility for the progress of the DC's Services, adherence to budget and schedule, and will work with the DC so that the DC has a clear understanding of and receives the necessary support to successfully execute the project.

1. GENERAL REQUIREMENTS

a. Scope of Services

The DC must develop a Detailed Scope of Services for the project. The Scope of Services must consist of:

- Executive Summary and Introduction describing the project objectives and goals;
- Project limits and proposed construction scope of Services;
- Staffing plan including staff hour assignments of key and support staff members

- as well as an organization chart;
- Description of DC duties and responsibilities of other agencies;
- Description of DC deliverables, including a list of drawings and specifications by Phase to be prepared as part of the project;
- Cost estimation and control procedures;
- Project schedule and management procedures; and
- DC cost details and supporting documentation.

The draft Scope of Services must be submitted for review at the second meeting after notice of selection for a project. The final Scope of Services must be completed prior to the award of contract and must be incorporated into and serve as the DC's contract Scope of Services.

b. Quality Assurance Plan and Quality Control Procedures (QA/QC) Manual

The DC must prepare a QA/QC Manual for the project. The Manual must define the procedures used to control and insure the quality of the design process from scope definition through construction award. The QA/QC Manual must address the following:

- Management responsibility
- Design standards and documents
- Document control
- Process control
- Inspection and testing for construction
- Quality records and audit procedures
- Training

It is expected that the DC will have QA/QC procedures currently in place for the firm's own design process. The firm's Plan serves as the basis for the project QA/QC Plan and is expected to be modified to meet the needs of this project. The Plan must be compatible with CDOT Bureau of Bridges and Transit and IDOT QA/QC programs. The Draft QA/QC Plan must be submitted one week after Notice to Proceed, and the Final QA/QC Plan must be submitted within 3 weeks after Notice to Proceed.

c. Meetings

The DC must attend regular bi-weekly status meetings held with the CDOT Bureau of Bridges and Transit Project Manager and staff. These meetings will be held in CDOT's offices and attended by CDOT, DC and other agency personnel. The meetings serve as a forum to discuss and resolve issues in the design process.

Minutes of all meetings must be prepared in a format approved by CDOT and distributed by the DC within 3 working days of the meeting. The DC is also responsible for maintaining a list of action items, which will be updated at each meeting.

The DC may be asked to attend monthly IDOT/FHWA/City of Chicago or CTA/FTA/IDOT/City of Chicago coordination meetings as considered appropriate by CDOT staff and assist the CDOT staff in preparation of agenda and other support documentation.

d. Design Standards

The design must incorporate IDOT Standards for Bridge and Highway design, and CDOT or CTA Standards for station and facility design especially as they relate to Computer-Aided Drafting. Where existing City of Chicago

Design Standards exist, they must be converted to Computer Aided Design and Drafting Standards ("CADD") format. The DC must have demonstrated capability to perform CADD drafting. It is expected that the DC has designers familiar with AutoCADD prior to the start of the DC's Services.

e. Design and Construction Schedules

The DC must prepare a project schedule, including a Services breakdown, which depicts the project with key milestones and deliverables for design. The design schedule must be updated bi-weekly and at a minimum must include:

- Key decision points in the design process including the securing of all temporary easements, utility coordination and other items which require coordination;
- Responsible parties for each decision;
- Early start for each activity;
- Expected finish for each activity; and
- Critical path items.

The DC must also prepare a Construction Schedule. The schedule must show the major items of work to be performed by the construction Contractor and subcontractors. It is expected that this schedule will be refined as the design progresses and must be submitted to CDOT at the start of preliminary design, the end of preliminary design and with the 30% drawings. At a minimum, the Schedule must include:

- Mobilization
- Demolition as appropriate
- Utility Relocations
- Long lead time material procurement
- Structural construction
- Architectural construction
- Mechanical construction
- Roadway work
- Drainage and utilities
- Landscape and finish work

All schedules must be made available to CDOT in an electronic format as well as a graphic format. Color wall size versions of these schedules must be made available to CDOT personnel upon request.

f. Document Preparation

Consultant must prepare all plans, except those which incorporate existing CDOT plans for rehabilitation, using AutoCAD or MicroStation software. Bridge projects must follow IDOT CADD standards. CDOT must receive an electronic copy of all final plans. Final Plans for bridge projects must be plotted on 28 inch x 42 inch size mylar sheets. Final plans for transit projects must be plotted on 24 inch x 36 inch size mylar sheets. Interim plan submittal may be plotted on vellum. Project documents must be dimensioned in English units in accordance with the latest IDOT standards on dimensioning practice. Transit projects must be dimensioned in English units in accordance with FTA or IDOT standards on dimensioning practice as established in the Scope of Services.

Specifications for bridge projects must be prepared in the IDOT Special Provision format using the IDOT Standard Specifications for Road and Bridge Construction, Supplemental Provisions, Special Bridge Provisions and other IDOT Specifications.

Specifications for transit projects must be prepared in the Construction Specifications Institute ("CSI") format with appropriate cross reference to the IDOT Standard Specifications for Road and Bridge Construction, Supplemental Provisions, Special Bridge Provisions and other IDOT Specifications. Specifications must utilize a line item Schedule of Prices format along with an Add-Deduct Schedule of Unit Prices provided for all Lump Sum Items in the Schedule of Prices.

All Part 1 and 2 specifications must be prepared using WordPerfect, and CDOT must be provided with an electronic copy of all specifications.

g. Estimates

The DC is responsible for the preparation of cost estimates for construction. Cost estimates must be in a unit price format approved by CDOT. The DC must prepare an Engineer's Estimate of Cost which will be used as the basis for the evaluation of the bid tabulations. If the apparent low bid is more than 10 percent over the Engineer's Estimate of Cost, CDOT retains the right to request the DC to redesign the project at no additional cost to CDOT in order to provide a design that is within the proposed budget. All cost estimates must be prepared in Excel format.

h. Administration

The DC is responsible for all utility coordination and securing of all permits for all design Services to be performed, including agreements with the affected railroads. The DC, through CDOT, must coordinate the Services with other City agencies.

The DC must prepare all plats for temporary and permanent easements and must assist CDOT in the identification of them. The DC must secure temporary use permits, easements and/or right-of-way agreements from affected property owners. The DC must contact all appropriate agencies for which force work estimates are required. The DC must prepare letters on CDOT's behalf, if asked to do so, requesting this information and must monitor the progress of all easements and force work requests necessary for construction.

The DC must prepare monthly progress reports and invoices. These progress reports and invoices must be in the format approved by CDOT and must be submitted no later than the tenth day of the month after which Services have been performed.

i. Inspections

As part of its Services, the DC must maintain inspection surveillance on the structure to be designed. This inspection must be at a frequency, determined together with CDOT staff, to ensure the safety of the community. Results of each inspection must be forwarded to CDOT, together with recommendation for remedial Services, within 48 hours of the inspection.

j. Survey

DC must have a surveyor, licensed in the State of Illinois, survey all transit facility project levels involved, as well as adjacent properties, as required for building permit and construction.

k. Building Permit

The DC must prepare and submit the building permit application (if required for project) and 4 sets of prints to the

Department of Buildings. The DC is responsible for expediting the building permit plan review process and must provide all required surveys, information and corrections requested by the Department of Buildings. Building Department review will be completed prior to advertisement for bids. Upon contract award the Construction Contractor information can be added to the application, and the Construction Contractor will pay all building permit fees and pick up the Building Permit.

2. PHASE I - PRELIMINARY DESIGN FOR TRANSIT PROJECTS

The DC is responsible for the Phase I Preliminary Design for the project. The requirements and deliverables for Phase I must conform to IDOT and CDOT requirements.

CDOT has prepared general Scopes of Services for each transit project. As part of the Phase I Services, the DC must verify that the Scope of Services to be performed at each location is complete.

The Phase I Preliminary Design must include, but not be limited to:

- A detailed inspection of the existing facility to determine current condition. CDOT must be notified in writing of the need for emergency or remedial repairs;
- Preparation of a report which must include impacts on the transit passenger, pedestrian and vehicular traffic studies, traffic studies, environmental assessments and remediations as appropriate, right of way acquisitions, construction staging and other requirements.
- Preparation and submittal of 15 sets of outline specifications and of schematic designs and scoping documents at the 15% and 30% design levels with drawings sufficiently developed, including principal elements, dimensions, riser and single line diagrams; and key component sizes and types and locations;
- Attendance, as required, at all community meetings and preparation of all exhibits and other materials for these meetings or CDOT Community Newsletters;
- Soil borings, testing and the preparation of soil profiles and report with recommendations.
- Modification of any Phase I documents to incorporate either CDOT, CTA or other agency comments.
- Preparation of support documentation for Phase I review if necessary by other agencies, including the Illinois State Historic Preservation agency, the Chicago Plan Commission, the Illinois Environmental Protection Agency and other agencies as required;
- Preparation of mailings to affected property owners, to affected agencies, to other City agencies and to other parties as required;
- Inspection of City sewers adjacent to and through the project area, including television inspection of existing sewers, hydrologic and hydraulic studies, and recommendations as required to obtain approvals needed from the Chicago Department of Sewers for the project;
- Fifteen copies of a cost estimate (all design submittals); prepared on construction trades category basis, in sufficient detail to permit a review of the design and to make value engineering reductions or substitutions in the Scope of Services as may be necessary to keep the project within the budget;
- Written descriptive material to illustrate the scope of renovation work and preliminary engineering calculations; and

- Process and complete Board of Underground ("BOU").

As part of Phase I, the DC must prepare a listing of all plans and specifications required for the project.

3. PHASE II - FINAL DESIGN FOR TRANSIT PROJECTS

The DC must commence Final Design. The designs must be prepared in accordance with the general requirements noted above.

Consultant must examine for compliance all applicable governmental and agency requirements including but not limited to the following:

- Chicago Building Code and Zoning Ordinance
- All applicable Chicago Transit Authority design and construction standards and criteria, Special Building Requirements and Electrical and Design Criteria requirements
- Federal Register 49 CFR parts 27, 37 and 38 - transportation for individuals with disabilities; final rule
- Federal Register 40 CFR parts 62, National Emission Standards for hazardous air pollutants; asbestos, N.E.S.H.P. revision; final rule
- Federal Register 36 CFR part 1190, Minimum Guidelines for Accessibility Design; Federal Register 36 CFR part 1191; ADA, Accessibility Guidelines for Buildings and Facilities; Transportation Facilities.

All drawings, specifications and other documents produced by the Consultant must comply with pertinent requirements. All design, construction and/or alterations of buildings or other fixed facilities must be in conformance with either appendix A to part 37 of title 49, or the Uniform Federal Accessibility Standard, 41 CFR part 101-19 subpart 101-19.6, appendix A.

Three submittals must be made by the DC in Final Design: Preliminary (65% completion), Prefinal (95% completion) and Final Submittal, all of which must incorporate comments from CDOT, CTA and other agencies.

Final Design must include the preparation of a rendering, any Addenda required, attendance at any pre-bid meetings, review of all proposals, preparation of all bid tabulations and recommendation for award. Final Design drawings must be submitted to the MOPD and Building Department for Building Permit processing prior to bid.

Following the approval of 95% documents and cost estimates by the City of Chicago and incorporation of review comments from CTA, IDOT and CDOT, Consultant must prepare the final and complete contract plans. These documents must be fully reviewed, corrected, designed and ready for advertisement for bids.

4. PHASE III - CONSTRUCTION ENGINEERING SERVICES

The Construction Engineer ("CE") must perform Construction Engineering Services. The CE must perform and carry out, in a manner satisfactory to the City, the following Services pertaining to the construction of bridge rehabilitation and reconstruction projects and transit projects for which the CE has been selected. The CE must furnish the Services of personnel who will provide Services under the direction of the CDOT Bureau of Bridges and Transit Construction Division Chief.

The CE must provide a Senior Project Manager with overall project responsibility, an on-site Resident Engineer ("RE") responsible for all construction work to be performed, a QA/QC Manager and support personnel for the project. The Senior Project Manager and RE must be Licensed Professional Engineers in the State of Illinois. The CE must prepare all required documentation on behalf of the City. Material testing and inspections will be performed by others and will not be included as part of the Services of the CE.

Phase III Services must include, but are not limited to, the following:

Pre Construction Phase

- Review Plans and Specifications
- Develop Submittal Register
- Incorporate Addendum Into Plans/Specifications
- Set Up CDOT Filing System
- Review Site Conditions
- Set Up Various Computer Logs
- Attend Various Meetings and Prepare Minutes
- Develop General Safety Review Plan
- Develop Material Testing Guidelines
- Develop QA/QC Plan and Checklist
- Review IDOT Construction Check Lists
- Review CDOT/IDOT Construction Manuals
- Document Existing Conditions

Construction Phase

- Review Shop Drawings/Submittals
- Log and Transmit Shop Drawings/Transmittals
- Update and Issue Submittal Log
- Reproduce Drawings or Other Media as Required
- Make Entries in Daily Log and Diary
- Monitor/Update Material Certifications
- Inspect Incorporated Materials
- Update and Issue Material Test Reports Log
- Coordinate and Monitor Material Testing Firms
- Inspect General Construction
- Manage QA/QC Program and Documentation
- Verify Contractor's Layout
- Perform General Safety Reviews of Site
- Inspection of Pedestrian/Vehicular Traffic Control
- Maintain Master Project Files
- Update and Issue Project Logs
- Chair Construction Review Meetings
- Prepare and Issue Construction Review Minutes
- Prepare Project Schedule Status Report/Analysis
- Negotiate Contractor Change Orders
- Update and Issue Proposal/Modification Log
- Prepare Proposed Contract Modifications
- Review and Respond to Project Correspondence
- Update and Issue Correspondence Log
- Update and Issue CDOT File Letter Log

- ⊙ Draft Project Memoranda
- ⊙ Prepare CDOT Field Orders
- ⊙ Update and Issue Field Order Log
- ⊙ Issue "Request for Information"
- ⊙ Update and Issue RFI Log
- ⊙ Review and Log Certified Payrolls
- ⊙ Review and Process Monthly Pay Estimates
- ⊙ Prepare and Issue Preliminary and Final Punch Lists
- ⊙ Prepare Meeting Agendas
- ⊙ Attend Various Meetings and Prepare Meeting Minutes
- Prepare Biweekly Project Report
- Incorporate All Revisions Into Project Documentation
- ⊙ Provide Initial Line/Grade
- Coordinate Utility Work
- ⊙ Conduct "Pre-Phase" Meetings
- ⊙ Perform Public Relations Duties
- ⊙ Resolve Design/Coordination Issues

Post Construction Phase

- Review All As-Builts
- ⊙ Prepare Final Project Report
- ⊙ Compile and Transmit All Warranties/Guaranties
- ⊙ Compile and Transmit All O&M Manuals
- ⊙ Oversee All Punch List Work
- ⊙ Compile and Submit Final Documentation
- Pursue and Complete Final Close-Out

II. DETAILED SCOPE OF SERVICES (Category Specific)

PROJECT CATEGORY 1 - Transit Station Design Architectural Finishes

Description/Scope: Typically, these Services consist of design for the construction of transit station architectural finishes. The Services include, but are not limited to: fabrication, installation and/or modification of electrical, mechanical or HVAC work required for the operation of the facility; installation of finish tiles, ceilings, walls and floors; fabrication and installation of vertical circulation elements; fare collection; coordination of specialty subcontractors and coordination of construction activities with user agencies; and all other work related to the completion and successful operation of a transit facility.

Key Personnel: Key Personnel assigned for Category 1: Transit Station Design Architectural Finishes include, but are not limited to: (a) a full time Illinois licensed architect with "transit station" experience as project manager; (b) a full time Illinois licensed architect with "transit station" experience as project architect; (c) a support staff of engineers and architects with engineering and architectural degrees and "transit" experience in the type of Services specified; and (d) adequate computer support equipment and software.

PROJECT CATEGORY 2 - Elevated Transit Station Design

Description/Scope: Typically, these Services consist of the design for the construction and/or reconstruction of new or existing transit facilities above grade with station house facilities either located at track level or at grade. The Services include, but are not limited to: demolition of existing facilities either with or without adjacent rail traffic; structural steel and concrete fabrication, installation and/or modification of existing structures carrying rail facilities in accordance with the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering; structural steel and concrete fabrication, installation and/or modification of existing building and platform structures in accordance with applicable codes; fabrication, installation and/or modification of new and existing electrical, mechanical and HVAC systems; architectural steel, concrete and finish work for buildings and platforms; coordination of specialty subcontractors and coordination of construction activities with user agencies; civil, structural and utility work as required to support the operation of the new facility and restoration of adjacent site; trackwork, communications, signaling and other related rail operation support infrastructure modification, construction and replacement; construction of temporary station facilities; fabrication and installation of vertical circulation elements; staging and temporary construction as required to maintain operations; fare collection; and all other work related to the completion and successful operation of a transit facility above grade.

The Services also include design for the construction of transit station architectural finishes. The Services include, but are not limited to: fabrication, installation and/or modification of electrical, mechanical or HVAC work required for the operation of the facility; installation of finish tiles, ceilings, walls and floors; fabrication and installation of vertical circulation elements; fare collection; coordination of specialty subcontractors and coordination of construction activities with user agencies; and all other work related to the completion and successful operation of a transit facility.

Key Personnel: Key Personnel assigned for Category 2: Elevated Transit Station Design include, but are not limited to: (a) a full time Illinois licensed professional engineer with "transit station" experience as the project manager; (b) a full time Illinois licensed structural engineer with "transit and railroad" experience as project structural engineer; (c) a full time Illinois licensed architect with "transit station" experience as project architect; (d) a support staff of engineers and architects with engineering and architectural degrees and "transit" experience in the type of Services specified; and (e) adequate computer support equipment and software.

PROJECT CATEGORY 3 - Subway Transit Station Design

Description/Scope: Typically, these Services consist of the design for the construction and/or reconstruction of new or

existing transit facilities below grade. The Services include, but are not limited to: demolition of existing facilities either with or without adjacent rail traffic; structural steel and concrete fabrication, installation and/or modification of existing structures carrying rail facilities in accordance with the American Railway Engineering and Maintenance Association (AREMA) Manual for Railway Engineering; structural steel and concrete fabrication, installation and/or modification of existing building and platform structures in accordance with applicable codes; fabrication, installation and/or modification of new and existing electrical, mechanical and HVAC systems; architectural steel, concrete and finish work for buildings and platforms; coordination of specialty subcontractors and coordination of construction activities with user agencies; civil, structural and utility work as required to support the operation of the new facility and restoration of adjacent site; trackwork, communications, signaling and other related rail operation support infrastructure modification, construction and replacement; construction of temporary station facilities; staging and temporary construction as required to maintain operations; fare collection; temporary and/or permanent earth protection systems required for the below grade construction of facilities; fabrication and installation of vertical circulation elements; and all other work related to the completion and successful operation of a transit facility below grade.

The Services also include design for the construction of transit station architectural finishes. The Services include, but are not limited to: fabrication, installation and/or modification of electrical, mechanical or HVAC work required for the operation of the facility; installation of finish tiles, ceilings, walls and floors; fabrication and installation of vertical circulation elements; fare collection; coordination of specialty subcontractors and coordination of construction activities with user agencies; and all other work related to the completion and successful operation of a transit facility.

Key Personnel: Key Personnel assigned for Category 3: Subway Transit Station Design include, but are not limited to: (a) a full time Illinois licensed professional engineer with "transit station" experience as the project manager; (b) a full time Illinois licensed structural engineer with "transit and railroad" experience as project structural engineer; (c) a full time Illinois licensed architect with "transit station" experience as project architect; (d) a support staff of engineers and architects with engineering and architectural degrees and "transit" experience in the type of Services specified; and (e) adequate computer support equipment and software.

PROJECT CATEGORY 4 - Construction Engineering for Transit Projects

Description/Scope: Typically, Construction Engineering Services for the reconstruction or rehabilitation of CTA transit projects owned by the City of Chicago.

Key Personnel: Key Personnel assigned for Category 4: Construction Engineering for Transit Projects include, but are not limited to: (a) a demonstrated specialized experience in bridge and viaduct reconstruction and rehabilitation; (b) a part time Illinois licensed professional engineer as senior project manager with overall project responsibility capabilities; (c) a full time Illinois licensed professional engineer as resident engineer capable of providing construction oversight of construction work activities; (d) an adequate number of support staff personnel for the performance of the Services and to assure that all Services which require the exercise of professional skills or judgement are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as required by law or professional standards; (e) adequate computer support equipment and software.

PROJECT CATEGORY 5 - Streetscape, Riverwalk, and Urban Landscape

Description/Scope: Typically this work consists of streetscape, riverwalk and urban landscape enhancements including roadside landscape features, ornamental and street lighting, street furnishings, commercial and neighborhood identifiers, transit and informational kiosks, gateway architecture, parking, lake and riverside pedestrian walks, bicycle paths, pedestrian bridges, underbridge connections, canoe launches, pedestrian or bicycle treatments and facilities, ground and above ground planters, medians, street trees, pocket parks, parks and greenways.

Key Personnel: Key Personnel for assigned for Category 5: Streetscape, Riverwalk, and Urban

Landscape must include, but not be limited to: (a) a full time Illinois Licensed Architect with experience on similar projects as Project Manager; (b) a support staff including a landscape architect, civil engineer, structural engineer and electrical engineer with degrees in engineering and architecture and design experience on similar projects; and (c) adequate computer support equipment and software.

PROJECT CATEGORY 6 - Transit Facilities

Description/Scope: Typically design engineering/architectural services for transportation projects including but not limited to transit terminals and facilities, bicycle paths and facilities, pedestrian ways and facilities, transit improvements, and landscape architecture.

Key Personnel: Key Personnel for assigned for Category 6: Transit projects must include, but not limited to, (a) a full time Illinois Licensed Engineer or Architect with experience on similar projects as Project Manager, (b) a support staff including a landscape architect, architect, civil engineer, structural engineer and electrical engineer with degrees in engineering and architecture and design experience on similar projects, and (c) adequate computer support equipment and software.

III. SELECTION PROCESS

An Evaluation Committee, which will include representatives of the Department, and any designated representatives of the Commissioner, will review the submittals in accordance with the Evaluation Criteria (see Section III) and the submittal Requirements (see Section IV). The process will be overseen by the Department of Procurement Services. The Committee may recommend to the Commissioner a short list of Respondents who may, at the Commissioner's discretion, be invited to make oral presentations or provide clarification to their submittal. Afterwards, the Committee will complete its evaluation and submit its recommendation(s) to the Commissioner. The Commissioner will make the final selection for each project category pre-qualification and request the Chief Procurement Officer designate the firm as pre-qualified.

The City reserves the right to seek clarification of information submitted in response to this RFQ and/or request additional information during the evaluation process. The Chief Procurement Officer reserves the right to accept or reject any or all submittals when it is determined, in the sole discretion of the Chief Procurement Officer, to be in the best interest of the City of Chicago.

Nothing in this RFQ is intended to, nor operates to, limit or otherwise constrain the authority, powers and discretion of the Chief Procurement Officer as set forth in the Municipal Purchasing Act for Cities of 500,000 or More in Population, 65 ILCS 5/8-10-1 et. seq., as amended, and in the Municipal Code of the City of Chicago, as amended.

Cancellation. The City reserves the right to terminate this procurement at any stage if the Chief Procurement Officer determines it to be in the best interest of the City. In no event is the City liable to Respondents for any cost or damages incurred by Respondents, subconsultants, subcontractors or other interested parties in connection with the procurement process, including but not limited to any and all costs of preparing the Statement of Qualifications and participation in any conferences, oral presentation or negotiations.

IV. EVALUATION CRITERIA

The Evaluation Committee will review the submittals for each specific project category in accordance with the following criteria.

- A. Professional and Technical Competence as evidenced by:
1. The professional qualifications and experience of the Respondent necessary for the satisfactory performance of Transit Design Engineering Services and/or Transit Construction Engineering Services to perform the required Services for the applicable category of pre-qualification.

The verifiable present and past performance of the firm(s) as prime consultants on other contracts in terms of quality of Services and compliance with performance schedules. The Committee may solicit, from current and past clients including the City of Chicago, other government agencies or any available sources, relevant information concerning the record of past performance of the firm(s).
 2. Professional qualifications and specialized experience of Key Personnel and Key Support Personnel committed to provide Professional Services for Transit Design Engineering Services and/or Transit Construction Engineering Services.
- B. Local Availability of Key Technical Personnel and Support Personnel assigned to the project(s) including the current and future commitments of all key and support personnel.
- C. Financial Capability.
- D. Compliance with all technical, financial and submittal requirements, as outlined in the Scope of Services.
- E. Legal Actions within the last 5 years.
- F. Commitment to meet MBE/WBE or DBE goals, on a project by project basis

V. SUBMITTAL REQUIREMENTS

A. Format

Submittals must be prepared on standard 8 ½" x 11" letter size, recycled paper (with no less than 20% post-consumer content), printed double sided and bound on the long side. It is the City's policy to encourage the use of reusable, recycled, recyclable and chlorine-free printed materials in the submittal of all bids, proposals, reports and other documents prepared in connection with this solicitation. Expensive papers and bindings are discouraged since no materials will be returned. Of the 5 copies submitted, at least one complete set of submittal materials must contain original signatures and be marked **ORIGINAL**.

This Pre-Qualification solicitation is divided into distinct project categories, as indicated in the project category descriptions attached here.

Respondents may submit responses for any one project category or combination of project categories.

Sections must be separated by labeled tabs OR a page divider and organized in accordance with these Submittal Requirements (Section __ Tab: __).

Respondents need only provide a Tab OR Divider for the applicable project category(ies) for which they are qualifying.

- Project Category 1: Transit Station Design (Architectural Finishes)**
- Project Category 2: Elevated Transit Station Design**
- Project Category 3: Subway Transit Station Design**
- Project Category 4: Construction Engineering for Transit Projects**
- Project Category 5: Streetscape, Riverwalk and Urban Landscape**
- Project Category 6: Transit Facilities**

Respondents must adhere to the submittal requirements. Failure to comply with the instructions of this Pre-Qualification may be cause for rejection of submittals. The Chief Procurement Officer represents and acts for the City of Chicago in all matters pertaining to this RFQ and any Agreement(s) which may be awarded in conjunction with it. The Chief Procurement Officer reserves the right to reject any or all Statements of Qualifications and to disregard any informality in the submittal, when in his opinion the best interest of the City will be served. The City of Chicago reserves the right to accept any submittal and/or any part or parts of them and/or reject any or all submittals.

B. Contents

The submittal must include the following items:

1. Cover Letter.

- a. A cover letter signed by an authorized representative of the Respondent. The cover letter must contain a commitment to participate in the Pre-Qualification Program to provide Transit Design and/or Transit Construction Engineering Services with the personnel specified in the pre-qualification submission for the specific project categories applied for. Additionally, the letter must include a brief statement of understanding and approach to the Scope of Services and a statement regarding the Respondent's Computer Aided Drafting and Design Capabilities, as described in the Scope of Services.

- b. Additionally, the cover letter must include a statement that if the Respondent is selected to participate in the Pre-Qualification Program, the Respondent understands and agrees that it will not take any exceptions to the City's standard contract terms and conditions to assure the City's expedited contracting process.

Section 1-Tab: A

2. Commitment to MBE/WBE/DBE Goals.

The selected pre-qualified Respondents must:

Abide by the MBE/WBE/DBE requirements on a project by project basis. The MBE goals are 16.9% and the WBE goals are 4.5%. For projects with funding requiring the use of DBE firms, the DBE commitment will be determined on a project by project basis.

Respondents are required to provide a written statement of its commitment to meet MBE/WBE/DBE requirements. Respondents are NOT required to complete Schedule C-1 & D-1 documents as part of this pre-qualification process.

Provide a narrative which outlines the manner and areas of expertise in which MBE/WBE and DBE goals would be achieved. State its commitment to meet the applicable goals on a project by project basis. Provide a plan delineating the various anticipated categories and/or disciplines of Services to be provided by MBE/WBE/DBE firms. Provide the names and qualifications for the prospective MBE/WBE/DBE firms that it plans to utilize to fulfill the goals.

Provide a list of contracts with the City for the last 5 years, and indicate the MBE/WBE/DBE compliance requirements and the level of compliance met. If the Respondent has been performing Services to the City for less than 5 years, provide a list representative of the years doing business with the City. Note: If the Respondent is an MBE/WBE or DBE firm, provide a statement for those projects which the firm was a Prime and a statement regarding its compliance for the additional goals.

A copy of the MBE/WBE Special Conditions and DBE Special Conditions have been attached for your reference. You are NOT required to provide executed Schedules as part of this pre-qualification process. Executed schedules will be required on a project by project basis as stated in this RFQ, Section B., Scope of Services, Pre-Qualification Program Overview.

Section 2-Tab: A

3. Qualifications of the Respondent

Describe current and previous experience on projects of similar type, Services, scope and magnitude as outlined in the Detailed Scope of Services for Transit Design and/or Transit Construction Engineering. Complete Forms A, "Related Experience of Firm," for Design Engineering Services. Provide on Form A, reference information including name, address and telephone number of contact person for each project identified.

Selected submitted projects must include project title, project duration, project location, total dollar value of the project, total fee received by the firm and a brief description of the project, including project fund source (i.e., federal, state or local funds). Provide a statement regarding the role played by your firm in a project as a Prime Consultant

or Subconsultant (e.g., joint venture partner, subcontractor or supplier) and the name of the Key Personnel involved in the project. Experience will not be considered unless complete reference data is provided.

- Section 3-Tab: A1, Project Category 1
- Section 3-Tab: A2, Project Category 2
- Section 3-Tab: A3, Project Category 3
- Section 3-Tab: A4, Project Category 4
- Section 3-Tab: A5, Project Category 5
- Section 3-Tab: A6, Project Category 6

4. Qualifications and experience of Key Technical Personnel and Key Support Personnel.

Note: Regarding the structural categories, a full time employee is defined as one who works for a firm 35 or more hours/week, 52 weeks/year. Part time staff members, committed employees, special consultants or individuals "on call" must not be submitted for review. Experience of the structural engineer must be at the project engineer level or higher. Only staff members available to provide Services on CDOT projects will be considered.

Submit chronological resumes or corporate personnel profiles with past experience for each of the key technical personnel and key support personnel committed to the project(s), and a statement regarding their local availability. Resumes must describe previous related experience. Provide references including: name, address and telephone number of the contact person; and a brief description of the project(s). Also, any professional certifications, accreditation, special licensing or other qualifications which qualifies the professional to perform in their designated area of responsibility. Project Manager(s), Professional Engineers ("PE") must be registered in the State of Illinois.

For each of the proposed key personnel, complete Form B "Related Experience of Key Personnel" (preferably related to each of the referenced projects in Form A).

- Section 4-Tab: A1, Project Category 1
- Section 4-Tab: A2, Project Category 2
- Section 4-Tab: A3, Project Category 3
- Section 4-Tab: A4, Project Category 4
- Section 4-Tab: A5, Project Category 5
- Section 4-Tab: A6, Project Category 6

5. Key Technical Personnel and Key Support Personnel Responsibility Matrix and Local Availability.

Provide a Key Technical Personnel and Key Support Personnel Matrix by using Attachment Form 1D to indicate qualified persons of sufficient manpower who will participate in their respective areas of expertise and which person will have prime responsibility for the task(s). Indicate who would assume the position and responsibilities as requested on the matrix and any additional specialized personnel to accomplish the requirements as shown in the Scope of Services for each project category. Personnel commitments must be indicated with current and projected projects, level of effort and expected completion. Complete Form C, "Current and Future Commitments of Key Personnel," included in Attachment 1.

Section 5-Tab: A1, Project Category 1

Respondent, provide Current & Future Commitments of Key Personnel (Form C) and Key Technical Personnel and Key Support Personnel Responsibility Matrix (Form D)

Section 5-Tab: A2, Project Category 2

Respondent, provide Current & Future Commitments of Key Personnel (Form C) and Key Technical Personnel and

Key Support Personnel Responsibility Matrix (Form D)

Section 5-Tab: A3, Project Category 3

Respondent, provide Current & Future Commitments of Key Personnel (Form C) and Key Technical Personnel and Key Support Personnel Responsibility Matrix (Form D)

Section 5-Tab: A4, Project Category 4

Respondent, provide Current & Future Commitments of Key Personnel (Form C) and Key Technical Personnel and Key Support Personnel Responsibility Matrix (Form D)

Section 5-Tab: A5, Project Category 5

Respondent, provide Current & Future Commitments of Key Personnel (Form C) and Key Technical Personnel and Key Support Personnel Responsibility Matrix (Form D)

Section 5-Tab: A6, Project Category 6

Respondent, provide Current & Future Commitments of Key Personnel (Form C) and Key Technical Personnel and Key Support Personnel Responsibility Matrix (Form D)

(Note: The City will not pay relocation fees for designated Key Personnel assigned to a project that are not locally available.)

6. Financial Capacity of the Respondent.

Provide a copy of the audited financial statements for the 3 previous years and last quarterly report. Statements must include auditor's notes, balance sheet and a statement on income/loss. Each prime or joint venture partner must submit this information. If a Respondent submits the audited statements of its parent organization, such audited statements must be accompanied by pro forma statements for the Respondent. If the Respondent possesses a Statement of Financial Capacity by the City or IDOT, please include a copy of the certificate. A single copy may be submitted in a sealed envelope "Confidential-Financial Information" and include confidentiality statement below if desired. The City reserves the right to accept alternate financial statements/information.

Section 6-Tab: A

7. Listing and brief description of all legal actions for the past 5 years in which the firm or any firm member has been:

- A debtor in bankruptcy; or
- A defendant in a legal action for deficient performance under a contract or violation of a statute; or
- A Respondent in an administrative action for deficient performance on a project or violation of a statute;
- A defendant in a criminal action; or
- A principal in any action taken against an insurance or bonding company of the firm or of a firm member.

Section 7-Tab: A

VI. CONFIDENTIALITY

Responses to this RFQ become the exclusive property of the City of Chicago. All documents submitted in response to this RFQ may be regarded as public records and may be subject to disclosure. Protection from disclosure generally applies to those elements in each submittal which are marked as "Trade Secret," "Confidential" or "Proprietary." During the course of the submittal evaluation process or the course of the project, the Chief Procurement Officer will accept materials clearly and prominently labeled "Trade Secret," "Confidential" or "Proprietary" by the Respondent or other submitting party. The Chief Procurement Officer will not advise as to the nature of the content of the documents entitled to protection from disclosure, or as to the definition of trade secret, confidential or proprietary information. The Respondent or other submitting party is solely responsible for all such determinations made by it, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret," "Confidential" or "Proprietary" as it determines to be appropriate. Respondents that indiscriminately so identify all or most of their submittal as protected from disclosure without justification may be considered non-responsive.

The Chief Procurement Officer will endeavor to advise the Respondent of any request for the disclosure of material so marked as "Trade Secret," "Confidential" or "Proprietary," and will give the Respondent or other submitting party the opportunity to seek a court order to protect such materials from disclosure. If the requested material was submitted by a party other than the Respondent, the Respondent is solely responsible for notifying the submitting party of the request. The City's sole responsibility is to notify the Respondent of the request for disclosure, and the City will not be liable for any damages arising out of such disclosure, whether such disclosure is deemed required by law, by an order of court or administrative agency, or occurs through inadvertence, mistake or negligence on the part of the City of Chicago or its officers, employees, Consultants or subconsultants.

In the event of litigation concerning the disclosure of any material submitted by the Respondent, the Respondent or other submitting party is responsible for prosecuting or defending any action concerning the materials at its sole expense and risk. If the City of Chicago is required to participate in such an action, the Respondent agrees to defend and indemnify the City of Chicago for any and all damages and costs arising in connection with the action (including but not limited to, reasonable attorneys' fees).

CATEGORY # _____

FORM A
Related Experience of Firm

Project Title:	Time Period:
Location of the Project:	Period of Firm's involvement:
Total dollar value of the project:\$	Total fee received by Firm:\$
Key personnel involved: <p style="text-align: center;">Name</p> <hr/> <hr/> <hr/> <hr/>	<p style="text-align: center;">Role</p> <hr/> <hr/> <hr/> <hr/>
Role of the Firm:	Reference Information: Name of Client: _____ Contact Person: _____ Title: _____ Address: _____ _____ _____ Telephone No.: _____

Brief description of the project

CATEGORY # _____

FORM B
Related Experience of Key Personnel

Name of Personnel involved:	Person's Title in project:
Project Title:	Time period of Person's involvement:
Total dollar value of the project:	Total fee received by Firm:\$
Education:	Reference Information: Name of Client: _____ Contact Person: _____ Title: _____ Address: _____ _____ _____ Telephone No: _____

Brief description of the project and role of person in project:
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**ATTACHMENT 2
SPECIAL CONDITIONS**

Special Conditions Regarding MBE/WBE Commitment

Special Conditions Regarding DBE Commitment

(for informational purposes only)

**SPECIAL CONDITION REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT
AND WOMEN BUSINESS ENTERPRISE COMMITMENT**
(MBE/WBE Professional Services)(10 pgs)

I. Policy and Terms

- A. It is the policy of the City of Chicago that Local Businesses certified as Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code shall have the maximum opportunity to participate fully in the performance of this agreement. Therefore, the contractor shall not discriminate against any person or business on the basis of race, color, national origin or sex, and shall take affirmative action to ensure that women and minority businesses shall have the maximum opportunity to compete for and perform subcontracts for supplies or services.

The Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all contracts to certified WBEs.

- B. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.
- C. Accordingly, the contractor commits to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Contract Goal: 16.9

WBE Contract Goal: 4.5

- D. The commitment is met by the contractor's status as an MBE or WBE, or by a joint venture with one or more certified MBEs or WBEs that will perform work on the project, or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by the indirect participation of MBEs or WBEs in other aspects of the contractor's business (but no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all contracts of such contractor), or by any combination of the foregoing.

Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both an MBE and WBE shall not be credited more than once against a contractor's MBE or WBE commitment in the performance of the contract.

- E. As noted above, the contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this contract. However, in determining the manner of MBE/WBE participation, the contractor shall first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract. In appropriate cases, the Chief Procurement Officer will require the contractor to demonstrate the specific efforts undertaken to involve MBEs and WBEs in direct participation in the performance of this contract.

SPECIAL CONDITION REGARDING MBE/WBE COMMITMENT

- F. The contractor also may with prior approval of the Chief Procurement Officer or designee, meet all, or part, of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector projects.

II. Definitions

- A. **"Minority Business Enterprise" or "MBE"** means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations.
- B. **"Women Business Enterprise" or "WBE"** means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations.
- C. **"Directory"** means the Directory of Certified "Disadvantaged Business Enterprises," "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the Contract Compliance Administrator. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE and WBE firms.
- D. **"Area of Specialty"** means the description of an MBE or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE/WBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory. Credit toward this contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

NOTICE: The Department of Procurement Services does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.

- E. **"Joint Venture"** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Contractors may develop joint venture agreements as an instrument to provide participation by MBEs and WBEs in contract work.
- F. **"Contract Compliance Administrator"** means the officer appointed pursuant to Section 2-92-490 of the Municipal Code of Chicago.

III. Joint Ventures

Bidders may develop joint venture agreements as an instrument to provide participation by certified MBEs and WBEs in contract work. A joint venture seeking to be credited for MBE and/or WBE participation may be formed among MBE and/or WBE firms or between an MBE and/or WBE firm and a non-MBE/WBE firm.

A joint venture is eligible for MBE or WBE credit if the MBE/WBE joint venture partner(s) share in the ownership, control and management responsibilities, risks and profits of the joint venture, and are responsible for a clearly defined portion of work to be performed, in proportion with the MBE and/or WBE ownership percentage.

Notice: The City requires that, whenever a joint venture is proposed as the prime contractor, each joint venture partner must separately sign the proposal to the City, in the pages captioned, TO BE EXECUTED BY

SPECIAL CONDITION REGARDING MBE/WBE COMMITMENT

A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.

IV. Counting MBE/WBE Participation Toward the Contract Goals

- A. The inclusion of any MBE or WBE in the contractor's MBE/WBE Utilization Plan shall not conclusively establish the contractor's right to full MBE/WBE credit for that firm's participation in the contract. Once an MBE or WBE is determined to be eligible in accordance with these rules, the total dollar value of the work awarded to the MBE or WBE may be counted toward the MBE or WBE goal except as indicated below:
- B. The Chief Procurement Officer reserves the right to deny or limit MBE/WBE credit to the contractor where any MBE or WBE is found to be engaged in substantial subcontracting or pass-through activities with others. A contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the performance of a clearly defined and distinct element of work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Chief Procurement Officer shall evaluate the amount of work subcontracted, industry practices, and other relevant factors. The amount of MBE/WBE participation credit shall be based upon an analysis by the Chief Procurement Officer of the specific duties that will be performed by the MBE or WBE. Each MBE/WBE shall be expected to actually perform a substantial (i.e., more than eighty-five percent (85%)) portion of the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment.

Requested information may include, without limitation: (1) specific information concerning brokers' fees and/or commissions; (2) intended sub-suppliers or other sources of goods and/or services; and (3) specific financial or other risks to be assumed by the MBE/WBE.

- C. MBEs and WBEs who have been certified as "brokers" shall no longer be considered eligible to participate for any consideration of MBE or WBE credit on contracts awarded by the City in 1993 and thereafter, until further notice.
- D. A joint venture may count toward its MBE or WBE goal the dollar value of the actual work performed by the MBE and/or WBE joint venture partner with its own resources.

The Chief Procurement Officer reserves the right to disallow goal credit for all, or any portion, of work performed by an MBE or WBE joint venturer based on evaluations of non-compliance with these Special Conditions or any other City, State and/or Federal regulation.

V. Regulations Governing Reduction or Waiver of MBE/WBE Goals

The following Regulations set forth the standards to be used in determining whether or not a reduction or waiver of the MBE/WBE commitment goals of a particular contract is appropriate. If a bidder or proposer determines that it is unable to meet the MBE and/or WBE goal percentage on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the MBE/WBE percentages submitted on the bidder/proposer's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

SPECIAL CONDITION REGARDING MBE/WBE COMMITMENT

Bidders/proposers will be considered responsive to the terms and conditions of these Regulations if a waiver request and proof of notification to an assist agency is submitted at the time of bid/proposal opening. Once the bids have been opened, the lowest responsive and responsible bidder so deemed by the Chief Procurement Officer or authorized designee will have no more than fourteen (14) calendar days to submit to the Department of Procurement complete documentation that adequately addresses the conditions for waiver described herein. Proposers responding to Request for Proposals (RFPs) who have been identified as a short listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein. Respondents to Request for Information and or Qualifications (RFI/RFQs) deemed by the Chief Procurement Officer or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations. Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder/proposer; or re-advertising the bid/proposal. All bidders/proposers are encouraged to submit all required documents at the time of bid opening to expedite the contract award.

A. Direct/Indirect Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

1. The bidder/proposer has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct or indirect work identified or related to the advertised bid/proposal. Direct participation involves subcontracting a portion of the goods/services specifically required in the bid/proposal. Indirect participation is the subcontracting of goods/services not specifically related to the performance of this contract. Documentation must include but is not necessarily limited to:
 - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
 - b. A listing of all MBE/WBE firms contacted that includes:
 - (1) Names, address and telephone numbers of MBE/WBE firms solicited;
 - (2) Date and time of contact;
 - (3) Method of contact (written, telephone, facsimile, etc.)
 - c. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
 - (1) Project identification and location;
 - (2) Classification/commodity of work items for which quotations were sought;
 - (3) Date, item and location for acceptance of subcontractor bid proposals;

SPECIAL CONDITION REGARDING MBE/WBE COMMITMENT

- (4) Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portion of the work and indicates why negotiations were unsuccessful;
- (5) Affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve MBE/WBE goals by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on MBE/WBE subcontractors for the type of work that was solicited.

OR

2. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontract's quote is excessively costly, the bidder/proposer must provide the following information:
 - a. A detailed statement of the work identified for MBE/WBE participation for which the bidder/proposer asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
 - (1) A listing of all potential subcontractors contacted for a quotation on that work item;
 - (2) Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
 - b. Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - (1) The City's estimate for the work under a specific subcontract;
 - (2) The bidder/proposer's own estimate for the work under the subcontract;
 - (3) An average of the bona fide prices quoted for the subcontract;
 - (4) Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

B. Assist Agency Participation

Every waiver and/or reduction request must include evidence that the bidder/proposer has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community.

The notice requirement of this Section will be satisfied if a bidder/proposer contacts at least one of the associations on Attachment A when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid/proposal submitted to be deemed responsive on the date of bid opening. If deemed appropriate, the Chief Procurement Officer or Contract Compliance Officer may contact the assist agency for verification of notification.

C. Impracticability

1. If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.
2. The requirements set forth in these Regulations shall not apply where the Chief Procurement Officer determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices or standards not previously known by the Procurement Department administrator, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders/proposers, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

VI. Procedure To Determine Bid Compliance

The following Schedules and described documents constitute the bidder's MBE/WBE proposal, and must be submitted in accordance with the guidelines stated:

- A. Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant. A Schedule C-1 executed by the MBE/WBE (subcontractor or Joint Venture partner) must be submitted by the bidder/proposer for each MBE/WBE included on their Schedule D-1 and must accurately detail the work to be performed by the MBE/WBE and the agreed rates and prices to be paid.

If any fully completed and executed Schedule C-1 is not submitted with the bid/proposal, it must be received by the Contract Administrator within ten (10) days of the bid/proposal opening. (All post bid/proposal submissions must have original signatures on all documents). Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

- B. Letters of Certification.

A copy of each proposed MBE/WBE firm's current Letter of Certification from the City of Chicago must be submitted with the bid/proposal.

All Letters of Certification issued by the City of Chicago include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-1, must conform to their stated Area of Specialty.

- C. Joint Venture Agreements.

If the bidder's/proposer's MBE/WBE proposal includes the participation of an MBE/WBE as joint venture on any tier (either as the bidder/proposer or as a subcontractor), the bidder/proposer must provide a copy of the joint venture agreement.

SPECIAL CONDITION REGARDING MBE/WBE COMMITMENT

D. Schedule D-1: Affidavit of MBE/WBE Goal Implementation Plan

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm.

Except in cases where the bidder/proposer has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section V. herein, the bidder/proposer must commit to the expenditure of a specific dollar amount of participation and a specific percentage of the total award amount for each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, as percentages of the total estimated usage.

All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the bid opening (see Section VI. A., above), the bidder/proposer may submit a revised Schedule D-1 (executed and notarized) to conform with the Schedule C-1. Except in cases where substantial and documented justification is provided, bidders/proposers will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

VII. Reporting Requirements During The Term of The Contract

- A. The Contractor shall, not later than thirty (30) days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements shall be made available to the Chief Procurement Officer upon request.
- B. In the case of one time procurements of supplies with either single or multiple deliveries to be performed in less than one year from the date of contract award, an "MBE/WBE Utilization Report," indicating final MBE and WBE payments shall be submitted directly to the Department of Procurement Services so as to assure receipt either at the same time, or before the using Department receives the contractor's final invoice. Final payments may be held until the Utilization Reports have been received.
NOTICE: Do not submit invoices with "MBE/WBE Utilization Reports."
- C. During the term of all other contracts, the contractor shall submit regular "MBE/WBE Utilization Reports;" a copy of which is attached. The frequency with which these reports are to be submitted will be determined by the Chief Procurement Officer; but in no case will reports be required less often than on a quarterly basis. In the absence of written notice from the Chief Procurement Officer, the contractor's first "MBE/WBE Utilization Report" will be due ninety (90) days after the date of contract award, and reports will be due quarterly thereafter.
- D. "MBE/WBE Utilization Reports" are to be submitted directly to: Department of Procurement Services, Office of Vendor Relations, City Hall, Room 403, 121 N. LaSalle Street, Chicago, Illinois 60602.
- E. The Contract Compliance Administrator shall be entitled to examine, on five (5) business days notice, the contractor's books and records including without limitation payroll records, tax returns and records, and books of account, to determine whether the contractor is in compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the contract. Such rights are in addition to any other audit inspection rights contained in the contract.

VIII. MBE/WBE Substitutions

Changes by the contractor of the commitments earlier certified in the Schedule D-1 are prohibited. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE/WBE requirements.

The contractor must notify the Chief Procurement Officer immediately in writing of the necessity to reduce or terminate an MBE/WBE subcontract and to utilize a substitute firm for some phase of work. The contractor's notification should include the reason for the substitution request, as well as, the name, address and principal official of the substitute MBE/WBE and the dollar value and scope of work of the subcontract. Attached should be all the requisite MBE/WBE affidavits and documents, as enumerated above in Section VI. above, "Procedure to Determine Bid Compliance."

The City will not approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary for the contractor in order to comply with MBE/WBE contract requirements.

After award of contract, no relief of the MBE/WBE requirements will be granted by the City except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the contractor to locate specific firms, solicit MBE/WBE bids, seek assistance from technical assistance agencies, etc., as outlined above in the section V. above, entitled "Regulations Governing Reductions To or Waiver of MBE/WBE Goals".

IX. Non-Compliance and Damages

The following constitutes a material breach of this contract and shall entitle 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 satisfy the MBE/WBE percentages required by the contract; and
- (2) the contractor or subcontractor is disqualified as an MBE or WBE, and such status was a factor in contract award, and was misrepresented by the contractor.

In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall seek to discharge the disqualified subcontractor or supplier, upon proper notification to the Chief Procurement Officer and/or Contract Compliance Administrator and make every effort to identify and engage a qualified MBE or WBE as its replacement. Furthermore, continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. Payments due to the contractor may be withheld until corrective action is taken.

X. Arbitration

- A. In the event that a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by

SPECIAL CONDITION REGARDING MBE/WBE COMMITMENT

the City. The Ordinance and contracts subject thereto provide that any disputes between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and an MBE/WBE.

- B. An MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitative 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, Section X. A. above, within ten (10) days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall 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 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
- C. All fees of the arbitrator are the initial responsibility of the MBE/WBE; provided, however, that the arbitrator is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing MBE/WBE.
- D. The MBE/WBE must send the City a copy of the "Demand for Arbitration" within ten (10) days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

XI. Record Keeping

The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs/WBEs, retaining these records for a period of at least three years 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.

XII. Information Sources

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration
500 W. Madison Street, Suite 1250
Chicago, Illinois 60661
General Information
(312) 353-4528

S.B.A. - Bond Guarantee Program
Surety Bonds
500 West Madison, Suite 1250
Chicago, Illinois 60661
Attention: Carole Harris
(312) 353-4003

S.B.A. - Procurement Assistance
500 West Madison, Suite 1250
Chicago, Illinois 60661
Attention: Robert P. Murphy, Area Regional Administrator
(312) 353-7381

SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case, however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their current Letter of Certification.

All Information Requested by this Schedule must Be Answered in the Spaces Provided. Do Not Refer to Your Joint Venture Agreement Except to Expand on Answers Provided on this Form. If Additional Space Is Required, Additional Sheets May Be Attached.

- I. Name of joint venture: _____
Address of joint venture: _____

Phone number of joint venture: _____
- II. Identify each non-MBE/WBE venturer(s):
Name of Firm: _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____
- III. Identify each MBE/WBE venturer(s):
Name of Firm: _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____
- IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture: _____

- V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.
- VI. Ownership of the Joint Venture.
A. What are the percentage(s) of MBE/WBE ownership of the joint venture?
MBE/WBE ownership percentage(s) _____
Non-MBE/WBE ownership percentage(s) _____
- B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):
1. Profit and loss sharing: _____
2. Capital contributions:
(a) Dollar amounts of initial contribution: _____

(b) Dollar amounts of anticipated on-going contributions: _____

Schedule B: Affidavit of Joint Venture (MBE/WBE)

- 3. Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer):

- 4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control:

- 5. Provide copies of all written agreements between venturers concerning this project.
- 6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

VII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

- A. Joint venture check signing:

- B. Authority to enter contracts on behalf of the joint venture:

- C. Signing, co-signing and/or collateralizing loans:

- D. Acquisition of lines of credit:

Schedule B: Affidavit of Joint Venture (MBE/WBE)

E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements:

G. Management of contract performance. (Identify by name and firm only):

1. Supervision of field operations: _____
 2. Major purchases: _____
 3. Estimating: _____
 4. Engineering: _____
-
-

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the "managing partner," if any, and describe the means and measure of their compensation:

C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-MBE/WBE firm, the MBE/WBE firm, or the joint venture.

Schedule B: Affidavit of Joint Venture (MBE/WBE)

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of MBE/WBE Partner Firm

Name of Non-MBE/WBE Partner Firm

Signature of Affiant

Signature of Affiant

Name and Title of Affiant

Name and Title of Affiant

Date

Date

On this _____ day of _____, 20____, the above-signed officers

(names of affiants)

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Signature of Notary Public

My Commission Expires: _____

(SEAL)

MBE/WBE UTILIZATION REPORT

Utilization Report No. _____

Specification No. _____

Contract No. _____

Project Name: _____

STATE OF: _____)

COUNTY (CITY) OF: _____)

In connection with the above-captioned contract:

I HEREBY DECLARE AND AFFIRM that I am the _____
(Title - Print or Type)

and duly authorized representative of _____
(Name of Prime Consultant/Contractor - Print or Type)

(Address of Prime Consultant/Contractor) ()
(Phone)

and that the following Minority and Women Business Enterprises have been contracted with, and have furnished or are furnishing and preparing materials for, and rendering services stated in the contract agreement.

The following Schedule accurately reflects the value of each MBE/WBE sub-agreement and the amounts of money paid to each to date.

MBE/WBE FIRM NAME	GOODS/SERVICES PROVIDED	AMOUNT OF CONTRACT	AMOUNT PAID TO-DATE
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

Total MBE: \$ _____

Total WBE: \$ _____

MBE/WBE UTILIZATION REPORT

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

Name of Contractor:

(Print or Type)

Signature:

(Signature of affiant)

Name of Affiant:

(Print or Type)

Date:

(Print or Type)

State of _____

County (City) of _____

This instrument was acknowledged before me on _____
(date)

by _____ (name/s of person/s)

as _____ (type of authority, e.g., officer,
trustee, etc.)

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

Signature of Notary Public

(Seal)

SCHEDULE C-1

Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant

Name of Project/Contract: _____

Specification Number: _____

From: _____
(Name of MBE/WBE Firm)

MBE: Yes _____ No _____

WBE: Yes _____ No _____

To: _____ and the City of Chicago:
(Name of Prime Contractor - Bidder/Proposer)

The undersigned intends to perform work in connection with the above projects as a:

_____ Sole Proprietor

_____ Partnership

_____ Corporation

_____ Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached letter of Certification from the City of Chicago effective date of _____ to _____ for a period of five years.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

The above described performance is offered for the following price and described terms of payment:

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheets.

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, and will do so within (3) three working days of receipt of a signed contract from the City of Chicago.

(Signature of Owner or Authorized Agent)

Name / Title (Print)

Date

Phone

SCHEDULE D-1

Affidavit of MBE/WBE Goal Implementation Plan

Project Name : _____

State of _____

County (City) of _____

I HEREBY DECLARE AND AFFIRM that I am duly authorized representative of:

Name of Prime Consultant/Contractor

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the MBE/WBE goals of this contract.

All MBE/WBE firms included in this plan have been certified as such by the City of Chicago (Letters of Certification Attached).

- I. MBE or WBE Prime Consultant/Contractor. If prime consultant is a certified MBE or WBE firm, attach copy of City of Chicago Letter of Certification. (Certification of the prime consultant as a MBE satisfies the MBE goal only. Certification of the prime consultant as a WBE satisfies the WBE goal only.)
- II. MBEs and WBEs as Joint Venturers. If prime consultant is a joint venture and one or more joint venture partners are certified MBEs or WBEs, attach copies of Letters of Certification and a copy of Joint Venture Agreement clearly describing the role of the MBE/WBE firm(s) and its ownership interest in the joint venture.
- III. MBE/WBE Subconsultants. Complete for each MBE/WBE subconsultant/subcontractor/supplier.

1. Name of MBE/WBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____
Percent Amount of Participation: _____%

2. Name of MBE/WBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____
Percent Amount of Participation: _____%

SCHEDULE D-1

3. Name of MBE/WBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____
Percent Amount of Participation: _____ %
4. Name of MBE/WBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____
Percent Amount of Participation: _____ %
5. Name of MBE/WBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____
Percent Amount of Participation: _____ %
6. Name of MBE/WBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____
Percent Amount of Participation: _____ %
7. Name of MBE/WBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____
Percent Amount of Participation: _____ %

SCHEDULE D-1

8. Attach additional sheets as needed.

IV. Summary of MBE Proposal:

MBE Firm Name	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
Total MBE Participation:	\$ _____	_____ %

V. Summary of WBE Proposal:

WBE Firm Name	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
Total WBE Participation:	\$ _____	_____ %

To the best of my knowledge, information and belief, the facts and representations contained in this Schedule are true, and no material facts have been omitted.

The contractor designates the following person as their MBE/WBE Liaison Officer:

Name _____ Phone Number: _____

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

Signature of Affiant (Date)

State of _____
County of _____

This instrument was acknowledged before me on _____ (date)
by _____ (name /s of person/s)
as _____ (type of authority, e.g., officer, trustee, etc.)
of _____ (name of party on behalf of whom instrument
was executed).

(Seal)

Signature of Notary Public

**SPECIAL CONDITIONS REGARDING
DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT
(FAA/FTA/FHWA(IDOT) funded Professional Services)**

INTRODUCTION

Non-Discrimination. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

Note: The Consultant must include the provision set forth in the paragraph above in all of its subcontract agreements.

Compliance. In the performance of this Agreement, including the procurement and lease of materials or equipment, Consultant must abide by the disadvantage business enterprise commitment requirements and all other requirements set forth in the Disadvantaged Business Enterprises Special Conditions set forth below. Consultant's completed Schedules C-1 and D-1 evidencing its compliance with this requirement are made a part of this Agreement, upon acceptance by the Chief Procurement Officer. Consultant must utilize disadvantaged business enterprises at the greater of the amounts listed in those Schedules C-1 and D-1 or the percentages listed therein as applied to all payments received from the City.

DBE Financial Institutions. Consultant is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of Consultant's willingness to do business with DBEs. Information about such institutions is available in the City of Chicago's

DBE Program document as well as these Special Conditions Regarding Disadvantaged Business Enterprise Commitment, (See Section 12, "DBE Financial Institutions") and the Directory of Disadvantaged, Minority and Women-Owned Business Enterprises, copies of which are available at the City of Chicago, Bid and Bond Room, City Hall, Room 301, Chicago, IL 60602 or at the City of Chicago WEBSITE: www.cityofchicago.org/purchasing.

1. Policy and Terms

- A. It is the policy of the City of Chicago that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, shall have the maximum feasible opportunity to participate fully in the performance of contracts financed under this agreement. Therefore the contractor shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative action to ensure that women and minority owned businesses shall have the maximum feasible opportunity to compete for and perform subcontracts for supplies or services.
- B. Accordingly, the Contractor (hereinafter, "Consultant") agrees to expend not less than the following percentages of the total contract price, if awarded, for contract participation by DBEs:

DBE participation goal: as set forth in the project agreement

- C. This commitment may be met by the prime Consultant's status as a DBE, or by a joint venture with one or more certified DBEs, or by subcontracting a portion of the work to one or more certified DBEs, or by the purchase of materials used in the performance of the contract from one or more certified DBEs, or by any combination of the foregoing. 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 ten percent (10%) of the initial award

SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

or \$50,000 whichever is greater for opportunities to increase participation of DBEs already involved in the contract.

2. Definitions

- A. **"Disadvantaged Business Enterprise" or "DBE"** means a small business concern certified by the City of Chicago or by the Illinois Department of Transportation (IDOT) as a business owned and controlled by socially and economically disadvantaged individuals in accordance with United States Department of Transportation Regulations 49 CFR Part 26.

Note: For FHWA/IDOT funded projects only, DBE certification issued by IDOT is acceptable. A business that has been denied certification or decertified by IDOT will not be able to participate as a DBE prime contractor, subcontractor or joint venture partner on any City awarded contracts funded by the Federal Highway Administration or the Illinois Department of Transportation. (Copies of the Regulations Governing Certification are available from the Department of Procurement Services, Room 301, 121 N. LaSalle Street, Chicago, Illinois 60602).

- B. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The Chief Procurement Officer shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The Chief Procurement Officer also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu and Nauru;
- (5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh, Sri Lanka, Bhutan, the Maldives Islands and Nepal;
- (6) "Women."

- C. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$16.6 million over the previous three fiscal years.

- D. **"Directory"** means the Directory of Certified "Disadvantaged Business Enterprises" "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the Contract Compliance

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Administrator. The Directory identifies firms that have been certified as DBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed DBE firms.

(Copies of the Directory of Certified DBE/MBE/WBE Businesses are available in the Bid and Bond Room, Room 301, 121 N. LaSalle Street, Chicago, Illinois 60602).

- E. "Area of Speciality"** means the description of a DBE firm's business which has been determined by the Chief Procurement Officer 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 Speciality. This information is also contained in the Directory. Credit toward this contract's DBE participation goal shall be limited to the participation of firms performing within their certified Area of Speciality.

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

- F. "Joint Venture"** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Consultants may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between DBE firm(s) and non-DBE firm(s).

A joint venture is eligible for DBE credit if the DBE partner(s) share in the ownership, control, management responsibilities, risks and profits of the joint venture, and are responsible for a clearly defined portion of work to be performed, in proportion with the DBE ownership percentage.

- G. "Contract Compliance Administrator"** means the officer appointed pursuant to Section 2-92-490 of the Municipal Code of Chicago.

3. Third Party Challenges to Eligibility of DBE Firm

Any third party may challenge the socially and economically disadvantaged status of any individual presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the City as a DBE (except an individual whose firm has a current 8(a) certification from the Small Business Administration). The challenge shall be made in writing to the City, and shall include all information available to the challenging party relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged. The City will, during its determination of findings, notify the challenged party of the statements and identity of the challenging party, and will notify both parties in writing of the outcome. If the City determines first that there was not reasonable grounds presented in the challenge sufficient to justify an inquiry, then the City will notify the challenger that the proceedings are now terminated. During the pendency of any challenge, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

4. Joint Ventures

Bidders may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between a DBE firm and a non-DBE firm.

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A joint venture is eligible if, and only if, all of the following requirements are satisfied:

1. the DBE venturer(s) share in the (1) ownership, (2) control, (3) management (4) risks and (5) profits of the joint venture in proportion with the DBE ownership percentage;
2. the DBE venturer(s) is responsible for a clearly defined portion of work to be performed, in proportion with the DBE ownership percentage; and
3. the DBE venturer(s) actually perform (with its own forces and using its own equipment) work equal to at least 50% of the value of its ownership of the joint venture.

For example, if the DBE is proposed as a 25% venturer on a \$1,000,000 contract (or subcontract), the DBE must, in addition to its other joint venture responsibilities, perform work equal to at least \$125,000 (or 50% of 25% of \$1,000,000).

The Chief Procurement Officer will 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. In addition, the Chief Procurement Officer shall consider the record of the joint venturers as joint venturers on City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the Joint Venture shall be final.

Note: Credit for participation by DBEs in joint venture with non-DBEs does not require a minimum participation of 51% in venture ownership and control on the part of the DBE. A junior ownership interest only in the venture by the DBE can be credited toward the contract DBE goal in a *pro rata* fashion (as indicated Section 5. below, "*Counting DBE Participation Toward the Contract Goal*").

NOTICE: The City requires that, whenever a joint venture is proposed as the prime contractor, each joint venturer must separately sign the proposal to the City, in the following execution pages: TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.

5. Counting DBE Participation Toward the Contract Goals

- A. The inclusion of any DBE in the Consultant's DBE Utilization Plan shall not conclusively establish the Consultant's right to full DBE credit for that firm's participation in the contract.
- B. The Chief Procurement Officer reserves the right to deny or limit DBE credit to the Consultant where any DBE is found to be engaged in substantial subcontracting or pass-through activities with others. In this regard, a Consultant may count toward its DBE goal only expenditures to firms that perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the performance of a clearly defined and distinct element of work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Chief Procurement Officer shall evaluate the amount of work subcontracted, industry practices, and other relevant factors. The amount of DBE participation credit shall be based upon an analysis by the Chief Procurement Officer of the specific duties that will be performed by the DBE. Each DBE shall be expected to perform all of the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment.
- C. Credit for the participation of DBE firms as joint venture partners shall be based upon a detailed analysis of the duties, responsibilities and risks undertaken by the DBE as specified by the joint venture's executed

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joint venture agreement. The Chief Procurement Officer reserves the right to deny or limit DBE credit to the Consultant where any DBE joint venture partner is found to have duties, responsibilities, risks of loss and management control over the joint venture that is not commensurate with or in proportion to its joint venture ownership.

6. Procedure to Determine Compliance with Contract Requirements

The following Schedules and described documents constitute the Consultant's DBE proposal, and **must be submitted together with its proposal at the time of bid opening or submission of proposals**, unless stated otherwise:

A. Schedule B: Affidavit of DBE/Non-DBE Joint Venture

Where the Consultant's DBE proposal includes the participation of any DBE as a joint venturer prime or subcontractor, The Consultant's must submit , together with its bid or proposal, a Schedule B: Affidavit of DBE/Non-DBE Joint Venture, with an attached copy of the joint venture agreement proposed among the parties.

B. Schedule C-1: Letter of Intent from DBE to Perform as Subconsultant/Subcontractor/ Supplier.

A **Schedule C-1**, executed by the DBE firm (or Joint Venture Subcontractor) must be submitted by the Consultant for each DBE included on their Schedule D-1 Utilization Plan and must accurately detail the work to be performed by the DBE firm and the agreed rates and prices to be paid.

C. Schedule D-1: Affidavit of DBE Goal Implementation Plan

Consultant must submit, prior to contract award, a completed **Schedule D-1** committing them to the utilization of each listed DBE firm. Except in cases where the Consultant has received a complete waiver of the DBE goals in accordance with Section 7. below, "*Grant of Relief for Consultants: Waiver of DBE Goal,*" the Consultant must commit to expend a specific percentage of the total dollar value of the contract with each DBE firm included on its **Schedule D-1**. The total dollar commitment to proposed DBE firms must at least equal the DBE goal. All commitments made by the Consultant's **Schedule D-1** must conform to those presented in the submitted **Schedule C-1s**.

D. Schedule F: Report of Subcontractor/Subconsultant 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/subconsultant information: Contractor name; Address; Contact person; DBE status; Type of work solicited

E. Letters of Certification

A copy of each proposed DBE firm's current Letter of Certification from the City of Chicago must be submitted with the proposal (RFQ or RFP). All Letters of Certification are dated and are valid for one year from date of issue by the City. All Letters of Certification issued by the City of Chicago include a statement of the DBE firm's Area of Specialty. The DBE firm's scope of work, as detailed by their **Schedule C-1** must conform to their certified Area of Specialty.

F. Joint Venture Agreements

If the Consultant's DBE proposal includes the participation of DBE firm(s) as joint venturers on any tier (either as the Consultant or as a subcontractor), Consultant must provide a copy of the joint venture agreement in addition to a completed **Schedule B**. In order to demonstrate the DBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include *specific details* related to: (1) contributions of capital and

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equipment; (2) work responsibilities or other performance to be undertaken by the DBE firm; (3) the commitment of management, supervisory and operations personnel employed by the DBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture; the distribution of funds received from each partner; each partner's authority to expend joint venture funds (e.g. check signing authority) and the details of each partner's joint venture responsibilities.

7. Grant of Relief for Consultants: Waiver of DBE Goal

The following Regulations set forth the standards to be used in determining whether or not a reduction or waiver of the DBE commitment goals of a particular contract is appropriate. If a bidder or proposer determines that it is unable to meet the DBE percentage on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the DBE percentages submitted on the bidder/proposer's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Disadvantaged Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

Bidders/proposers will be considered responsive to the terms and conditions of these Regulations if a waiver or reduction request and proof of notification to an assist agency is submitted at the time of bid/proposal opening. Once the bids/proposals have been opened, the lowest responsive and responsible bidder so deemed by the Chief Procurement Officer or authorized designee will have no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver or reduction described herein. Failure to submit documentation sufficient to support the waiver or reduction request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder/proposer; or re-advertising the bid/proposal. All bidders/proposers are encouraged to submit all required documents at the time of bid opening to expedite the contract award.

A. Direct Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate:

- (1) Bidder/proposer has documented the unsuccessful solicitation for either subcontractors or joint venture partners of DBE firms in an appropriately certified work category to perform any direct work identified or related to the advertised bid/proposal. Direct participation involves subcontracting a portion of the goods/services specifically required in the bid/proposal. Documentation must include but is not necessarily limited to:
 - (a) A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified DBE firms;
 - (b) A listing of all DBE firms contacted that includes:
 - (i) Names, address and telephone numbers of DBE firms solicited;
 - (ii) Date and time of contact;
 - (iii) Method of contact (written, telephone, facsimile transmittal, etc.)
 - (iv) Name of the person contacted.
 - (c) Copies of letters or any other evidence of mailing that substantiates outreach to DBE

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vendors that includes:

- (i) Project identification and location;
- (ii) Classification/commodity of work items for which quotations were sought;
- (iii) Date, item and location for acceptance of subcontractor bid proposals;
- (iv) Detailed statement which summarizes direct negotiations with appropriate DBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
- (v) Affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve DBE goals 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.

OR

- (2) Subcontractor participation will be deemed excessively costly when the DBE subcontractor proposal exceeds the average price quoted by more than fifteen percent (15%). In order to establish that a subcontractor's quote is excessively costly, the bidder/proposer must provide the following information:
 - (a) 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% higher).
 - (i) A listing of all potential subcontractors contacted for a quotation on that work item;
 - (ii) Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
 - (b) Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the DBE proposals are excessively costly, even though not in excess of 15% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - (i) The City's estimate for the work under a specific subcontract;
 - (ii) The bidder/proposer's own estimate for the work under the subcontract;
 - (iii) An average of the bona fide prices quoted for the subcontract;
 - (iv) Demonstrated increase in other contract costs as a result of subcontracting to the DBE or other firm.
 - (v) The City reserves the right to modify this procedure when deemed appropriate.

B. Assist Agency Participation

Every waiver and/or reduction request must include evidence that the bidder/proposer has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the DBE business community.

The notice requirement of this Section will be satisfied if a bidder/proposer contacts at least one of the associations on Attachment A to these Regulations when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B to these Regulations provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid/proposal submitted to be deemed responsive on the date of bid opening. If deemed appropriate, the Chief Procurement Officer or Contract Compliance Administrator may contact the assist agency for verification of notification.

C. Impracticability

- (1) If the Chief Procurement Officer determines that a lesser DBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.

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- (2) The requirements set forth in these Regulations shall not apply where the Chief Procurement Officer determines that DBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices or standards not previously known by the Procurement Services administrator, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders/proposers, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

8. Reporting Requirements During the Term of the Contract

- A. The Consultant shall, within thirty days of receiving the awarded contract, execute formal contracts or purchase orders with the DBE firms included in their approved Schedule D Utilization Plan. These written agreements shall be made available to the Chief Procurement Officer within 30 days upon execution.
- B. During the term of the contract, the Consultant shall submit regular "DBE Utilization Reports," a copy of which is attached. The frequency with which these reports are to be submitted will be determined by the Chief Procurement Officer, but in no case will reports be required less often than on a quarterly basis. In the absence of written notice from the Chief Procurement Officer, the Consultant's first "DBE Utilization Report" will be due ninety (90) days after the date of contract award, and reports will be due quarterly thereafter.
- C. "DBE Utilization Reports" are to be submitted directly to: Department of Procurement Services, Office of Vendor Relations, City Hall, Room 403, 121 N. LaSalle Street, Chicago, Illinois 60602.

9. DBE Substitutions

- A. Arbitrary changes by the Consultant of the commitments earlier certified in the **Schedule D-1** are prohibited. Further, after once entering into each approved DBE subagreement, the Consultant shall thereafter neither terminate the subagreement, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without in each instance receiving the prior written approval of the Chief Procurement Officer.
- B. In some cases, however, it may become necessary to substitute a new DBE in order to actually fulfill the DBE requirements. In such cases, the Chief Procurement Officer must be given reasons justifying the release by the City of prior specific DBE commitments established in the Consultant's Schedule D Utilization Plan. The substitution procedure will be as follows:
- (1) The Consultant must notify the Chief Procurement Officer immediately 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 DBE contract goals.
 - (2) The Consultant's notification should include the specific reasons for the proposed substitution.

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Stated reasons which would be acceptable include any of the following examples: A previously committed DBE was found not to be able to perform, or not to be able to perform on time; a committed DBE was found not to be able to produce acceptable work; a committed DBE was discovered later to be not bona fide; a DBE previously committed at a given price later demands an unreasonable escalation of price.

The Consultant'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 Consultant; issues about performance by the committed DBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); a DBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

- (3) The Consultant'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 and documents, which are required of Consultants, as enumerated above in Section 6., "Procedure to Determine Compliance with Contract Requirements."
 - (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 requesting more information, or requesting 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) Actual substitution of a replacement DBE to fulfill contract requirements should not be made before City approval is given for the substitute DBE. Once notified of City approval, the substitute DBE subcontract must be executed within five working days, and a copy of the DBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.
- C. The City will not approve extra payment for escalated costs incurred by the Consultant when a substitution of subcontractors becomes necessary for the Consultant in order to comply with DBE contract requirements.
- D. After award of contract, no relief of the DBE requirements will be granted by the City except in exceptional circumstances. Requests for complete or partial waiver of the DBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Consultant to locate specific firms, solicit DBE proposals, seek assistance from technical assistance agencies, etc., (as outlined in Section 6. above, "Grant of Relief for Consultants: Waiver of DBE Goal").
- E. In a case where an enterprise under contract was previously considered to be a DBE but is later found not to be, or whose work is found not to be creditable toward DBE goals fully as planned, the City will consider the following special criteria in evaluating a waiver request:
- (1) Whether the Consultant was reasonable in believing the enterprise was a DBE or that eligibility or "counting" standards were not being violated;
 - (2) The adequacy of unsuccessful efforts taken to obtain a substitute DBE (as outlined in Section 6. above, "Grant of Relief for Consultants: Waiver of DBE Goal").

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- F. The Chief Procurement Officer has sole authority regarding all matters of DBE compliance, including the granting of waivers or other relief to Consultants.

10. Non-Compliance

- A. The following constitutes a material breach of this contract and shall entitle 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 satisfy the DBE percentages required by the contract; and
 - (2) the contractor or subcontractor is disqualified as a DBE, such status was a factor in contract award, and was misrepresented by the contractor.
- B. In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified DBE as its replacement. Furthermore, continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. Payments due to the contractor may be withheld until corrective action is taken.
- C. When the contract requirements are completed, in the event that the City has determined that the contractor was not compliant in the fulfillment of the required DBE goals, and a grant of relief of the requirements was not obtained, the City will thereby be damaged in the failure to provide the benefit of participation to DBEs to the degree set forth in this Special Condition. 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 DBE goals, one percent of the base bid for this contract shall be surrendered by the Contractor to the City of Chicago in payment as liquidated damages.

11. Record Keeping

The Contractor shall maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period of at least five years 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.

12. DBE Financial Institutions

The City of Chicago currently has no certified DBE financial institutions. However, there are several local financial institutions owned and operated by minorities or women, many of which are currently certified with the City as MBEs and/or WBEs.

MBE and/or WBE Certified Institutions:

Community Bank of Lawndale
Highland Bank
Pan American Bank
Seaway National Bank

Minority and/or Female Owned Institutions:

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Banco Popular
First Commercial Bank
Illinois Federal Savings Bank

13. 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
Attention: Gary Peele
(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) 353-4503

Project information; general DBE information; Directory of local and out-of-state construction and design DBEs:

City of Chicago
Department of Procurement Services
Office of Vendor Relations
City Hall-Room 403
Chicago, Illinois 60602
Attention: Carnice Carey
(312) 744-1895

City of Chicago
Department of Procurement Services
Contract Administration Division
City Hall-Room 403
Chicago, Illinois 60602
Attention: Kerwen Whatley
(312) 744-8267

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 Suppliers
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

SCHEDULE B: Affidavit of DBE/Non-DBE Joint Venture
(FTA, FHWA and FAA Funded Contracts)

Note: If all joint venturers are DBEs, a written joint venture agreement between the DBE venturers may be submitted in lieu of this form. In all proposed joint ventures, each DBE venturer must submit a copy of its current Letter of Certification.

ALL INFORMATION REQUESTED BY THIS SCHEDULE MUST BE ANSWERED IN THE SPACES PROVIDED. DO NOT REFER TO YOUR JOINT VENTURE AGREEMENT EXCEPT TO EXPAND ON ANSWERS PROVIDED ON THIS FORM. IF ADDITIONAL SPACE IS REQUIRED, ADDITIONAL SHEETS MAY BE ATTACHED.

I. Name of joint venture: _____
Address of joint venture: _____

Phone number of joint venture: _____

II. Identify each non-DBE venturer(s): _____
Name of Firm: _____
Address: _____

Phone: _____
Contact person for matters concerning DBE compliance: _____

III. Identify each non-DBE venturer(s): _____
Name of Firm: _____
Address: _____

Phone: _____
Contact person for matters concerning DBE compliance: _____

IV. Describe the role(s) of the DBE venturer(s) in the joint venture:

V. Attach a copy of the joint venture agreement. In order to demonstrate the DBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the DBE's own forces; (3) work items to be performed under the supervision of the DBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the DBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.

A. What are the percentage(s) of DBE ownership of the joint venture?
DBE ownership percentage(s) _____
Non-DBE ownership percentage(s) _____

B. Specify DBE percentages for each of the following (provide narrative descriptions and other details as applicable):
1. Profit and loss sharing:

2. Capital contributions:
(a) Dollar amounts of initial contribution: _____
(b) Dollar amounts of anticipated on-going contributions: _____

SCHEDULE B: Affidavit of DBE/Non-DBE Joint Venture

3. Contributions of equipment (specify types and quantities of equipment to be provided by each venturer):

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control:

5. Provide copies of all written agreements between venturers concerning this project.

6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

VII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint venture check signing:

B. Authority to enter contracts on behalf of the joint venture:

C. Signing, co-signing and/or collateralizing loans:

D. Acquisition of lines of credit:

E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements:

SCHEDULE B: Affidavit of DBE/Non-DBE Joint Venture

G. Management of contract performance. (identify by name and firm only):

1. Supervision of field operations: _____
2. Major purchases: _____
3. Estimating: _____
4. Engineering: _____

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the "managing partner," if any, and describe the means and measure of their compensation:

C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-DBE firm, the DBE firm, or the joint venture.

Trade	Non-DBE Firm (number of employees)	DBE (number of employees)	Joint Venture (number of employees)

Note: If any personnel proposed for this project will be employees of the joint venture:

A. Are any proposed joint venture employees currently employed by either venturer?
Currently employed by non-DBE (number) _____ Currently employed by DBE _____

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:

C. Which venturer will be responsible for the preparation of joint venture payrolls:

SCHEDULE B: Affidavit of DBE/Non-DBE Joint Venture

XI. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

Attach additional sheets as needed

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

SCHEDULE B: Affidavit of DBE/Non-DBE Joint Venture

Note: If there are any changes in the information submitted after filing this Schedule B and before the completion of the joint venture's work on the project, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of DBE Partner Firm

Name of Non-DBE Partner Firm

Signature of Affiant

Signature of Affiant

Name and Title of Affiant

Name and Title of Affiant

Date

Date

On this ____ day of _____, 20 ____, the above-signed officers

(names of affiants)

personally appeared and, known to me to be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Signature of Notary Public

My Commission Expire: _____

(SEAL)

SCHEDULE C-1
Letter of Intent from DBE to Perform
as Subconsultant/Subcontractor/Supplier

Name of Project: _____
Specification No. _____

From: _____
(Name of DBE Firm)

To: _____ and the City of Chicago:
(Name of Prime Consultant/Contractor)

The DBE status of the undersigned is confirmed by the attached letter of Certification from the City of Chicago dated _____.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

The above described services or goods are offered for the following price and described terms of payment:

If more space is needed to fully describe the DBE firm's proposed scope of work and/or payment schedule, attach additional sheets.

Conditioned upon your execution of a contract with the City of Chicago, the undersigned will enter into a formal written agreement for the above work with you as a Prime Consultant/Contractor, and will do so within (3) three working days of receipt of a signed contract from the City of Chicago.

(Signature of President, Owner or Authorized Agent)

Name/Title (Print)

Date

Phone

SCHEDULE D-1
Affidavit of DBE Goal Implementation Plan

Project Name : _____
Specification No.: _____

State of _____

County (City) of _____

I HEREBY DECLARE AND AFFIRM that I am the duly authorized representative of:

Name of Prime Consultant/Contractor

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the DBE goal of this contract.

All DBE firms included in this plan have been certified as such by the City of Chicago (Letters of Certification attached).

- I. **DBE Prime Consultant/Contractor.** If prime consultant is a certified DBE firm, attach copy of City of Chicago Letter of Certification.
- II. **DBEs as Joint Venturers.** If prime consultant is a joint venture and one or more joint venture partners are certified DBEs, attach copies of Letters of Certification and a copy of Joint Venture Agreement clearly describing the role of the DBE firm(s) and its ownership interest in the joint venture.
- III. **DBE Subconsultants.** Complete for each DBE subconsultant/subcontractor/supplier.

1. Name of DBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____ Percent of Participation: _____%

2. Name of DBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____ Percent of Participation: _____%

SCHEDULE D-1

3. Name of DBE: _____
Address: _____
Contact Person: _____ Phone: _____
Dollar Amount of Participation \$ _____ Percent of Participation: _____%

4. Attach additional sheets as needed.

IV. Summary of DBE Proposal:

<u>DBE Firm Name</u>	<u>Dollar Amount of Participation</u>	<u>Percent Amount of Participation</u>
_____	\$ _____	_____%
_____	\$ _____	_____%
_____	\$ _____	_____%
_____	\$ _____	_____%
_____	\$ _____	_____%
Total DBE Participation:	\$ _____	_____%

To the best of my knowledge, information and belief, the facts and representations contained in this Schedule are true, and no material facts have been omitted.

The contractor designates the following person as their DBE Liaison Officer:

Name: _____ Phone Number: _____

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct and that I am authorized, on behalf of the contractor, to make this affidavit.

Signature of Affiant (Date)

State of _____
County of _____

This instrument was acknowledged before me on _____ (date)
by _____ (name of Affiant)
as _____ (title of Affiant)
of _____ (name of party on behalf of whom
this instrument was executed).

(Seal)

Signature of Notary Public

SCHEDULE F: Report of Subcontractor Solicitations
FHWA, FTA and FAA Funded Contracts

Project Name: _____
Specification #: _____

I, _____ on behalf of _____
(Name of reporter) (Prime contractor)

have either personally solicited, or permitted a duly authorized representative of this firm to solicit, work for this contract from the following subcontractors which comprise all DBE and non-DBE subcontractors who bid or quoted price information on this contract:

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? _____ Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? _____ Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? _____ Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? _____ Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Name of Subcontractor _____
Address of Subcontractor _____
Contact Person _____
Status: DBE Certified? _____ Yes No
Type of Work Solicited _____
Years in Business (if available) _____
Annual Gross Receipts (if available) _____

Project information and general MBE/WBE information:

City of Chicago
Department of Procurement
Office of Vendor Relations
City Hall - Room 403
Chicago, Illinois 60602
Attention: Monica Cardenas
(312) 744-0845

City of Chicago
Department of Procurement
Contract Administration Division
City Hall - Room 403
Chicago, Illinois 60602
Attention: Byron Whittaker
(312) 744-4926

Directory of Certified Disadvantaged, Minority and Women Business Enterprises:

City of Chicago
Department of Procurement
Office of Business Development - Certification Unit
City Hall - Room 403
Chicago, Illinois 60602
Attention: Lori Lypson
(312) 744-1896

General Information, Department of Procurement Services: www.cityofchicago.org/purchasing

Information on MBE/WBE availability in the manufacturing, sales or supplies, and related fields (direct assistance from 42 regional affiliates located throughout the U.S.):

National Minority Suppliers
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 - Suite 850
Chicago, Illinois 60603
Attention: Tracye Smith
(312) 263-0105

ATTACHMENT 3

**PROFESSIONAL SERVICE AGREEMENT
STANDARD TERMS & CONDITIONS (REVISED 1/17/06)**

City Funds

FHWA and FTA Funds

(for informational purposes only)

Specification No.:
Contract No.:
Requisition No.:
Vendor No.:

PROFESSIONAL SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS
FOR
PROFESSIONAL DESIGN ENGINEERING SERVICES
BETWEEN
CONSULTANT'S NAME
AND
THE CITY OF CHICAGO
DEPARTMENT OF TRANSPORTATION



RAHM EMANUEL
MAYOR

(City, State & Federal Funds)

**PROFESSIONAL SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS**

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PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into as of the _____ day of _____, **2011** by and between _____, an _____ (Corporation) ("**Consultant**"), located at _____, and the City of Chicago ("**City**"), a municipal corporation and home rule unit of local government existing under the laws of the State of Illinois, acting through its Department of Transportation ("**Department**").

The City and Consultant agree as follows:

TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

1.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"**Additional Services**" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 2.1 and Exhibit 1 and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 9.3 of this Agreement before Consultant is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"**Agreement**" means this Professional Services Agreement, including all exhibits, which are attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"**Chief Procurement Officer**" means the Chief Procurement Officer of the City of Chicago and any representative duly authorized in writing to act on his behalf.

"**Commissioner**" means the Commissioner of the Department of Transportation, and any representative authorized in writing to act on the Commissioner's behalf.

"**Services**" means, collectively, the services, duties and responsibilities described in Article 2 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"**Subcontractor**" means any person or entity with whom Consultant contracts to provide any part of the Services, including subcontractors and subconsultants of any tier, whether or not in privity with Consultant.

1.2 Interpretation

- (a) The term "**include**" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.
- (b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- (c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- (e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- (f) All references to a number of days mean calendar days, unless indicated otherwise.

1.3 Order of Precedence of Component Parts

In the event of any conflict or inconsistency between the terms set forth in Article 1 through Article 12 of this Agreement and the terms set forth in Exhibit 1 through Exhibit 4, including the Attachments to the Exhibits, the terms and provisions contained in Article 1 through Article 12 of this Agreement will take precedence over the terms and provisions contained in Exhibit 1 through Exhibit 4 except to the extent such terms and provisions are more favorable to the City.

Article 1 through Article 12 govern the legal relationship between the parties and Exhibit 1 and Exhibit 2 describe the Services Consultant is to perform under this Agreement, set forth the Key Personnel, set forth the time limits for Consultant's performance, set forth the insurance requirements for the project, and set forth the compensation schedule for Consultant. As a result, the City and Consultant agree that any terms or matters set forth in either Exhibit 1 or Exhibit 2, including the Attachments to the Exhibits, that do not exclusively pertain to defining the Services Consultant is to perform, the Key Personnel, the time limits for Consultant's performance, the insurance requirements, and the compensation schedule for Consultant are of no effect as to this Agreement and, regardless of whether or not the City approves such terms or matters, are not binding on the City, except to the extent that they would diminish the City's obligations under this Agreement or increase Consultant's obligations or liabilities under this Agreement.

ARTICLE 2. DUTIES AND RESPONSIBILITIES OF CONSULTANT

2.1 Scope of Services

Consultant must provide the Services described in Exhibit 1, Scope of Services and Schedule for Performance, and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. Consultant must provide the Services in accordance with the standards of performance set forth in Section 2.3. Consultant must provide and maintain at Consultant's own expense, the insurance coverages and requirements specified in Exhibit 1.

2.2 Deliverables

In carrying out its Services, Consultant must prepare or provide to the City various Deliverables. "Deliverables" include work product, such as designs, plans and specifications, written reviews, recommendations, reports and analyses, produced by Consultant for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Consultant has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Consultant of its failure. If Consultant does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 8.1.

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

2.3 Standard of Performance

Consultant must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement.

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

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

2.4 Personnel

(a) Adequate Staffing

Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Consultant must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Consultant to the City and with written consent of the City, which consent the City will not withhold unreasonably. If the City fails to object to the revision within 14 days after receiving the notice, then the revision will be considered accepted by the City.

(b) Key Personnel

Consultant must not reassign or replace Key Personnel without the written consent of the City, which consent the City will not unreasonably withhold. "Key Personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Section 2.4(b), and set forth in Exhibit 1, Attachment 1-A. The Department may at any time in writing notify Consultant that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Consultant must immediately suspend the services of the key person or persons and must replace him or her or them in accordance with the terms of this Agreement.

(c) Salaries and Wages

Consultant and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Consultant underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Consultant, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Consultant to the respective employees to whom they are due.

The parties acknowledge that this Section 2.4(c) is solely for the benefit of the City and that it does not grant any third party beneficiary rights

2.5 Indemnification

- (a) Consultant must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:
- (i) injury, death or damage of or to any person or property;
 - (ii) any infringement or violation of any property right (including any patent, trademark or copyright);
 - (iii) Consultant's failure to perform or cause to be performed Consultant's covenants and obligations as and when required under this Agreement, including Consultant's failure to perform its obligations to any Subcontractor;
 - (iv) the City's exercise of its rights and remedies under Section 8.2 of this Agreement; and
 - (v) injuries to or death of any employee of Consultant or any Subcontractor under any workers compensation statute.
- (b) "Losses" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Consultant's breach of this Agreement or to Consultant's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.
- (c) Consultant's obligations to indemnify, keep, and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses excludes that portion of Losses caused by any act, error or omission on the part of the particular City officer(s), representative(s), elected and appointed official(s), agent(s) or employee(s) seeking indemnification under this Section 2.5 if Consultant's indemnification would violate the provisions of the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 *et seq.*

- (d) At the City Corporation Counsel's option, Consultant, subject to Section 2.5(c) above, must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Consultant of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.
- (e) To the extent permissible by law, Consultant waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Consultant that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.
- (f) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during Consultant's performance of Services beyond the term. Consultant acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Consultant's duties under this Agreement, including the insurance requirements in Exhibit 1 of this Agreement.

2.6 Ownership of Documents

All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Consultant under this Agreement are property of the City, including, as further described in Section 2.7 below, all copyrights inherent in them or their preparation. During performance of its Services, Consultant is responsible for any loss or damage to the Deliverables, data, findings or information while in Consultant's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Consultant. If not restorable, Consultant must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 2.5.

2.7 Copyright Ownership

Consultant and the City intend that, to the extent permitted by law, the Deliverables to be produced by Consultant at the City's instance and expense under this Agreement are conclusively deemed "**works made for hire**" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire," Consultant hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Consultant will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Consultant warrants to the City, its successors and assigns, that on the date of transfer Consultant is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Consultant further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Consultant warrants that the Deliverables are complete, entire and comprehensive within the standard of performance under Section 2.3 of this Agreement and that the Deliverables constitute a work of original authorship. The City will not reuse the Deliverables to build other projects, without the written consent of Consultant.

2.8 Visual Artists Rights Act Waiver

Consultant waives any and all rights, in any work of visual art that may be provided pursuant to this Agreement, that may be granted or conferred under Section 106A and Section 113 of the United States Copyright Act (17 U.S.C. § 101 *et seq.*) (the "*Copyright Act*").

2.9 Records and Audits

(a) Records

- (i) Consultant must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, to the City promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. In the event of the failure by Consultant to make such delivery upon demand, then and in that event, Consultant must pay to the City any damages the City may sustain by reason of Consultant's failure.
- (ii) Consultant must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement. Consultant must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 10.

(b) Audits

- (i) Consultant and any of Consultant's Subcontractors must furnish the Department with all information that may be requested pertaining to the performance and cost of the Services. Consultant must maintain records showing actual time devoted and costs incurred. Consultant must keep books, documents, paper, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of its Services.
- (ii) To the extent that Consultant conducts any business operations separate and apart from the Services required under this Agreement using, for example, personnel, equipment, supplies or facilities also used in connection with this Agreement, then Consultant must maintain and make similarly available to the City detailed records supporting Consultant's allocation to this Agreement of the costs and expenses attributable to any such shared usages.

- (iii) Consultant must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- (iv) No provision in this Agreement 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 which the City would have had in the absence of such provisions.
- (v) The City may in its sole discretion audit the records of Consultant or its Subcontractors, or both, at any time during the term of this Agreement or within five years after the Agreement ends, in connection with the goods, work, or services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that Consultant or any of its Subcontractors has overcharged the City in the audited period, the City will notify Consultant. Consultant must then promptly reimburse the City for any amounts the City has paid Consultant due to the overcharges and also some or all of the cost of the audit, as follows:
 - A. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Agreement prices, of the goods, work, or services provided in the audited period, then the Consultant 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;
 - B. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Agreement prices, of the goods, work, or services provided in the audited period, then Consultant must reimburse the City for the full cost of the audit and of each subsequent audit.

Failure of Consultant to reimburse the City in accordance with subsection A or B above is an event of default under this Agreement, and Consultant will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

2.10 Confidentiality

- (a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Consultant under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Consultant must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Consultant by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Consultant must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.
- (b) Consultant must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner.
- (c) If Consultant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Consultant's possession by reason of this Agreement, Consultant must immediately give notice to the Commissioner and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Consultant, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

2.11 Assignments and Subcontracts

Consultant must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement or any part of it, unless otherwise provided for in this Agreement or without the express written consent of the Chief Procurement Officer and the Department. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Chief Procurement Officer operate to relieve Consultant of any of its obligations or liabilities under this Agreement.

All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to observe or perform the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Consultant personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Consultant of any of its obligations or liabilities under this Agreement.

Consultant, upon entering into any agreement with a Subcontractor, must furnish upon request of the Chief Procurement Officer or the Department a copy of its agreement. All subcontracts must contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department and the Chief Procurement Officer. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

Consultant must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the Chief Procurement Officer. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Consultant under this Agreement, without such prior written approval, has no effect upon the City.

Under the Municipal Code of Chicago, ch. 2-92, Section 2-92-245, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement. Any such payment has the same effect as if the City had paid Consultant that amount directly. Such payment by the City to Consultant's Subcontractor under no circumstances operates to relieve Consultant of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

ARTICLE 3. TIME LIMITS FOR PERFORMANCE

3.1 Schedule for Performance

This Agreement takes effect as of the date of its execution by the City ("**Effective Date**") which is set forth in the preamble and will continue for 36 months, or until the Agreement is terminated in accordance with its terms, whichever occurs first. The Agreement may be extended for up to 2 additional one-year periods in accordance with Section 3.3.

3.2 Timeliness of Performance

- (a) Consultant must perform the Services as expeditiously as is consistent with professional skill and care and must provide the Services and Deliverables within the schedule required under Exhibit 1 of this Agreement.
- (b) Neither Consultant nor Consultant's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Consultant by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

3.3 Agreement Extension Option

The Chief Procurement Officer may at any time before this Agreement expires elect to extend this Agreement for up to 3 additional one-year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Consultant.

ARTICLE 4. COMPENSATION

4.1 Basis of Payment

The City will compensate Consultant according to the Schedule of Compensation contained in Exhibit 2 of this Agreement for the successful completion of the Services.

Notwithstanding anything in the Schedule of Compensation set forth in Exhibit 2 to the contrary, Consultant's compensation under this Agreement is limited to those amounts allowable and allocable to this Agreement under 48 C.F.R. Part 31, Subpart 31.6 (the Federal Acquisition Regulation), OMB Circular A-87 (incorporated by reference into 48 C.F.R. Part 31, Subpart 31.6), and the cost principles set forth in 48 C.F.R. Part 31,

Subpart 31.2, but only to the extent that the cost principles in Subpart 31.2 do not conflict with the terms of 48 C.F.R. Part 31, Subpart 31.6 and OMB Circular A-87. To the extent that an audit reveals that Consultant has received payment in excess of such amounts, the City may offset such excess payments against any future payments due to Consultant and, if no future payments are due or if future payments are less than such excess, Consultant must promptly refund the amount of the excess payments to the City.

4.2 Method of Payment

Consultant must submit monthly invoices to the City for labor and other direct and indirect costs as billed, as outlined in the Schedule of Compensation in Exhibit 2. The invoices must be signed, dated, reference the City contract number and name, and must be in such other detail as the City requests. If Consultant has more than one agreement with the City, Consultant must prepare and submit separate invoices for each agreement. Consultant must not submit invoices for less than \$500 unless a particular invoice is for last payment related to closeout of the Services.

The City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

4.3 Criteria for Payment

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

In the event of a dispute between Consultant and the City as to whether any particular charge will be paid, or as to whether the amount of such charge is reasonable, allocable to the Services, or allowable, Consultant must, and the Department may, jointly or individually, refer such dispute to the Chief Procurement Officer for resolution in accordance with the Disputes section of this Agreement. The City will not withhold payment for undisputed sums on such invoice while a dispute is being resolved. All invoice disputes will be handled as described in Section B.3 of Exhibit 2.

4.4 Funding

The source of funds for payments under this Agreement is the Fund Number set forth in Exhibit 2. Payments under this Agreement will not be made or due to Consultant in excess of the dollar amount set forth in Exhibit 2 without a written amendment in accordance with Section 9.3.

4.5 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 Agreement, then the City will notify Consultant in writing of that occurrence, and this Agreement 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 Agreement are exhausted. Payments for Services completed to the date of notification will be made to Consultant except that no payments will be made or due to Consultant under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.

4.6 Subcontractor Payments

- (a) Contractor must submit a status report of Subcontractor payments with each invoice for the duration of the contract on the "Subcontractor Payment Certification" form required by the City. The form can be downloaded from the City's website at http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/subcompliance.pdf. The statement must list the following for Contractor and for each Subcontractor and supplier for the period for which payment is requested:
 - (i) Total amount invoiced by the Contractor for the prior month;
 - (ii) The name of each particular Subcontractor or supplier utilized during the prior month;
 - (iii) Indication if the Subcontractor or supplier is acting as an MBE, WBE, DBE, or non-certified firm on this contract;
 - (iv) The vendor/supplier number of each Subcontractor or supplier;
 - (v) Total amount invoiced that is to be paid to each Subcontractor or supplier.
- (b) If a Subcontractor has satisfactorily completed its Work, or provided specified materials in accordance with the requirements of the Contract, Contractor shall pay Subcontractor for such work or materials within 14 days of Contractor receiving payment from the City.

ARTICLE 5. DISPUTES

Except as otherwise provided in this Agreement, Consultant must and the Commissioner may bring any dispute concerning a question of fact arising under this Agreement which is not disposed of to the Chief Procurement Officer for decision based upon written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room.)

The Chief Procurement Officer will reduce his decision to writing and mail or otherwise furnish a copy of it to Consultant. The decision of the Chief Procurement Officer is final and binding. If Consultant does not agree with the decision of the Chief Procurement Officer, the sole and exclusive remedy is judicial review by a common law writ of certiorari.

ARTICLE 6. COMPLIANCE WITH ALL LAWS

6.1 Compliance with All Laws Generally

- (a) Consultant must observe and 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 Agreement, including those set forth in this Article 6, and Consultant must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Consultant must require all Subcontractors to do so, also. Consultant must have filed, within 1 year prior to the Effective Date, an executed Economic Disclosure Statement and Affidavit ("**Disclosure Affidavit**") with the Chief Procurement Officer and must execute a No Changes Affidavit and a Disclosure of Retained Parties in the forms incorporated into this Agreement as Exhibit 4. Notwithstanding acceptance by the City of the Disclosure Affidavit, failure of the Disclosure Affidavit to include all information required under the Municipal Code renders this Agreement voidable at the option of the City.
- (b) Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

6.2 Nondiscrimination

(a) Consultant

In performing its Services under this Agreement, Consultant must comply with applicable laws prohibiting discrimination against individuals and groups.

(i) Federal Requirements

In performing its Services under this Agreement, Consultant must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Consultant's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); Drug Abuse Office and Treatment Act of 1972, P.L. 92-255, as amended; and Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, P.L. 91-616, as amended; and all other applicable federal statutes, regulations and other laws.

(ii) State Requirements

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A. Furthermore, Consultant must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended; and all other applicable state statutes, regulations and other laws.

(iii) **City Requirements**

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules. Further, Consultant must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(b) **Subcontractors**

Consultant must incorporate this Section 6.2 by reference in all agreements entered into with Subcontractors and labor organizations that furnish skilled, unskilled and craft union skilled labor, or any other services in connection with this Agreement.

6.3 Compliance with the Americans with Disabilities Act and Other Laws Concerning Accessibility

Consultant covenants that all designs, plans and drawings produced or utilized under this Agreement will address and comply with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities or environmentally limited persons including the following: the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"); the Architectural Barriers Act, Pub. L. 90-480 (1968), and the Uniform Federal Accessibility Standards ("UFAS"); and the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.*, and all regulations promulgated thereunder, *see* Illinois Administrative Code, Title 71, Chapter 1, Section 400.110. If the above standards are inconsistent, Consultant must assure that its designs, plans, and drawings comply with the standard providing the greatest accessibility. Also, Consultant must, prior to construction, review the plans and specifications to insure compliance with these standards. If Consultant fails to comply with the foregoing standards, the City may, without limiting any of its remedies set forth in Section 8.2 or otherwise available at law, in equity or by statute, require Consultant to perform again, at no expense, all Services required to be reperformed as a direct or indirect result of such failure.

6.4 Subcontractors 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.

6.5 Inspector General

It is the duty of any bidder, proposer or Consultant, 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, Consultant, Subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code of Chicago. Consultant understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

6.6 Business Relationships with Elected Officials

Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City, 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 a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement. The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code of Chicago.

Section 2-156-080 defines a "**business relationship**" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand

deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "**contractual or other private business dealing**" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

6.7 Prohibition on Certain Contributions - Mayoral Executive Order No. 05-1

Contractor agrees that Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5 percent ("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 percent ("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 not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this bid, proposal or Agreement by Contractor, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Contractor and the City, or (iv) during any period while an extension of this Agreement or any Other Contract 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 Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee. Contractor agrees that it 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. Contractor agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1. Contractor agrees that a 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. 05-1 constitutes a breach and default under this Agreement, 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 Agreement, 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. 05-1 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Contractor's bid.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Contractor is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (a) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (b) neither party is married; and
- (c) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (d) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (e) two of the following four conditions exist for the partners:
 1. The partners have been residing together for at least 12 months.
 2. The partners have common or joint ownership of a residence.
 3. The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
 4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

6.8 Chicago "Living Wage" Ordinance

- (a) Section 2-92-610 of the Municipal Code of Chicago provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("Covered

Employees"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- (i) If Consultant has 25 or more full-time employees, and
 - (ii) If at any time during the performance of this Agreement, Consultant and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "**Performing Parties**") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then
 - (iii) Consultant 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 Services performed under this Agreement.
- (b) Consultant's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.
- (c) As of July 1, 2009, the Base Wage became \$11.03, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four 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 divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Agreement, Consultant 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 Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Consultant and all other Performing Parties must pay the prevailing wage rates.
- (d) Consultant must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Consultant agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Consultant or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Consultant and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

- (e) **Not-for-Profit Corporations:** If Consultant 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 subsections (a) through (d) above do not apply.

6.9 Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

ARTICLE 7. SPECIAL CONDITIONS

7.1 Warranties and Representations

In connection with signing and carrying out this Agreement, Consultant:

- (a) warrants that Consultant is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Consultant is not appropriately licensed;
- (b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors are competent to perform the Services required under this Agreement; and Consultant is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;
- (c) warrants that it will not knowingly use the services of any ineligible consultant or Subcontractor for any purpose in the performance of its Services under this Agreement;
- (d) warrants that Consultant is not in default at the time this Agreement is signed, and has not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City of Chicago, and has obtained warranties from its Subcontractors substantially similar in form and substance;

- (e) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, 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 Chief Procurement Officer. 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.

- (f) 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.

- (g) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Consultant warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;
- (h) represents that Consultant and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1; and
- (i) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 8.1 and 8.3 of this Agreement.

7.2 Ethics

- (a) In addition to the foregoing warranties and representations, Consultant warrants:
 - (i) no officer, agent or employee of the City is employed by Consultant or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under the Municipal Code of Chicago (Chapter 2-156).
 - (ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to the prime Consultant or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.
- (b) Consultant further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

7.3 Joint and Several Liability

If Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Consultant is the joint and several obligation or undertaking of each such individual or other legal entity.

7.4 Business Documents

At the request of the City, Consultant must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

7.5 Conflicts of Interest

1. No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.
2. Consultant covenants that it, and to the best of its knowledge, its Subcontractors if any (collectively, "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.
3. Upon the request of the City, Consultant must disclose to the City its past client list and the names of any clients with whom it has an ongoing relationship. Consultant is not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Consultant's past or present clients. If Consultant becomes aware of a conflict, it must immediately stop work on the assignment causing the conflict and notify the City.
4. Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid

specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

5. Consultant further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Services or have access to any confidential information, as defined in Section 2.10 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Consultant's Services for others conflict with the Services Consultant is to render for the City under this Agreement, Consultant must terminate such other services immediately upon request of the City.

7.6 Non-Liability of Public Officials

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

ARTICLE 8. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET

8.1 Events of Default Defined

The following constitute events of default:

- (a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Consultant to the City.
- (b) Consultant's material failure to perform any of its obligations under this Agreement including the following:
 - a. Failure due to a reason or circumstances within Consultant's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;

- b. Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the Chief Procurement Officer or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - c. Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;
 - d. Discontinuance of the Services for reasons within Consultant's reasonable control; and
 - e. Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination.
- (c) Any change in ownership or control of Consultant without the prior written approval of the Chief Procurement Officer, which approval the Chief Procurement Officer will not unreasonably withhold.
- (d) Consultant's default under any other agreement it may presently have or may enter into with the City during the life of this Agreement. Consultant acknowledges and agrees that in the event of a default under this Agreement the City may also declare a default under any such other agreements.
- (e) Failure to comply with Section 6.1 in the performance of the Agreement.
- (f) Consultant's repeated or continued violations of City ordinances unrelated to performance under the Agreement that in the opinion of the Chief Procurement Officer indicate a willful or reckless disregard for City laws and regulations.

8.2 Remedies

The occurrence of any event of default permits the City, at the City's sole option, to declare Consultant in default. The Chief Procurement Officer may in his sole discretion give Consultant an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days, unless extended by the Chief Procurement Officer. Whether to declare Consultant 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 the Disputes provision of this Agreement.

The Chief Procurement Officer will give Consultant written notice of the default, either in the form of a cure notice ("**Cure Notice**"), or, if no opportunity to cure will be granted, a default notice ("**Default Notice**"). If the Chief Procurement Officer gives a Default

Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate (but not the decision not to terminate) is final and effective upon giving the notice. The Chief Procurement Officer may give a Default Notice if Consultant fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 8.2 and Article 10, Consultant must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City. After giving a Default Notice, the City may invoke any or all of the following remedies, individually or collectively:

1. The right to take over and complete the Services, or any part of them, at Consultant's expense and as agent for Consultant, either directly or through others, and bill Consultant for the cost of the Services, and Consultant must pay the difference between the total amount of this bill and the amount the City would have paid Consultant under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for Consultant under this Section 8.2;
2. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
3. The right of specific performance, an injunction or any other appropriate equitable remedy;
4. The right to money damages;
5. The right to withhold all or any part of Consultant's compensation under this Agreement;
6. The right to deem Consultant non-responsible in future contracts to be awarded by the City.

If the Chief Procurement Officer considers it to be in the City's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Consultant to continue to provide the Services despite one or more events of default, Consultant is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any

such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

8.3 Early Termination

In addition to termination under Sections 8.1 and 8.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Consultant. The City will give notice to Consultant in accordance with the provisions of Article 10. The effective date of termination will be the date the notice is received by Consultant or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 10 days after the date the notice is considered received as provided under Article 10 of this Agreement (if no date is given) or upon the effective date stated in the notice.

After the notice is received, Consultant must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 4, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Consultant must attempt to agree on the amount of compensation to be paid to Consultant, but if not agreed on, the dispute must be settled in accordance with Article 5 of this Agreement. The payment so made to Consultant is in full settlement for all Services satisfactorily performed under this Agreement.

Consultant must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Consultant will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against Consultant or the City to the extent inconsistent with this provision.

If the City's election to terminate this Agreement for default under Sections 8.1 and 8.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 8.3.

8.4 Suspension

The City may at any time request that Consultant suspend its Services, or any part of them, by giving 15 days prior written notice to Consultant or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Consultant must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Chief Procurement Officer and such equitable extension of time as may be mutually agreed upon by the Chief Procurement Officer and Consultant when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Consultant as a result of recommencing the Services must be treated in accordance with the compensation provisions under Exhibit 2 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Consultant by written notice to the City may treat the suspension as an early termination of this Agreement under Section 8.3.

8.5 Right to Offset

1. In connection with performance under this Agreement:

The City may offset any excess costs incurred:

- a. if the City terminates this Agreement for default or any other reason resulting from Consultant's performance or non-performance;
- b. if the City exercises any of its remedies under Section 8.2 of this Agreement; or
- c. if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these excess costs by use of any payment due for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those excess costs, Consultant is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

2. In connection with Section 2-92-380 of the Municipal Code of Chicago:

(i) In accordance with Section 2-92-380 of the Municipal Code of Chicago and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by Consultant to the City. For purposes of this Section 8.5 "**outstanding parking violation complaint**" means a parking ticket, notice of parking violation or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint. "**Debt**" means a specified sum of money owed to the City for which the period granted for payment has expired.

(ii) Notwithstanding the provisions of the above subsection, no such debt(s) or outstanding parking violation complaint(s) will be offset from the price or compensation due under this Agreement if one or more of the following conditions are met:

- A. Consultant has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking violation complaints and/or debts owed to the City and Consultant is in compliance with the agreement; or
- B. Consultant is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
- C. Consultant has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

3. In connection with any liquidated or unliquidated claims against Consultant:

Without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against Consultant unrelated to this Agreement. When the City's claims against Consultant are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse Consultant to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

ARTICLE 9. GENERAL CONDITIONS

9.1 Entire Agreement

(a) General

This Agreement, and the exhibits, which are attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

(b) No Collateral Agreements

Consultant acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Consultant to enter into this Agreement or has been relied upon by Consultant, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

(c) No Omissions

Consultant acknowledges that Consultant was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Consultant did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Consultant relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

9.2 Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

9.3 Amendments

No changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Consultant and by the Mayor, Comptroller, and Chief Procurement Officer of the City or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 9.3.

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

9.4 Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Consultant irrevocably submits itself to the original jurisdiction of those 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 Agreement. Service of process on Consultant may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Consultant, or by personal delivery on any officer, director, or managing or general agent of Consultant. If any action is brought by Consultant against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

9.5 Severability

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason,

those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

9.6 Assigns

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

9.7 Cooperation

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

9.8 Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Consultant's performance in any respect or waives a requirement or condition to either the City's or Consultant's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Consultant in writing.

9.9 Independent Contractor

- (a) This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Consultant and the City. The rights and the obligations of the parties are only those set forth in this

Agreement. Consultant must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) This Agreement is between the City and an independent contractor and, if Consultant is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

1. The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with Consultant performing the Services required under this Agreement.
2. Consultant is not entitled to membership in the City of Chicago Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City of Chicago.
3. The City of Chicago is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Consultant.

(c) Shakman

1. The City is subject to to the May 31, 2007, Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007, "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No. 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.
2. Consultant is aware that City policy prohibits City employees from directing any individual to apply for a position with Consultant, either as an employee or as a subcontractor, and from directing Consultant to hire an individuals as an employee or as a subcontractor. Accordingly, Consultant must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Consultant under this agreement are employees or subcontractors of Consultant, not employees of the City of Chicago. This Agreement 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 Consultant.

3. Consultant will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, 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, or such individuals' political sponsorship or recommendation. For purposes of this Agreement, 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 Consultant by a City employee or City official in violation of Section 9.9(c)(iii) above, Consultant 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 Agreement.

9.10 Electronic Ordering and Invoices

The vendor shall cooperate in good faith with the City in implementing electronic ordering and invoicing, including but not limited to catalogs, purchase orders, releases, and invoices. Vendor shall accept electronic purchase orders and releases upon request of the Chief Procurement Officer. Vendor shall provide the City electronic catalogs, copies of invoices and other electronic documents upon request. The electronic ordering and invoice documents shall 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 vendor. Vendor shall ensure that the essential information, as determined by the Chief Procurement Officer, in the electronic document, corresponds to that information submitted by the vendor in its paper documents. The electronic documents shall be in addition to paper documents required by this contract, however, by written notice to the vendor, 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.

ARTICLE 10. NOTICES

Notices provided for in this Agreement, unless provided for otherwise in this Agreement, must be given in writing and may 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:

If to the City: City of Chicago Department of Transportation
30 N. LaSalle Room 1100
Chicago, Illinois
Attention: Commissioner

and

Department of Procurement Services
Room 403, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Chief Procurement Officer

With Copies to Department of Law
Room 600, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

If to Consultant: To the address set forth in the preamble of this Agreement

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 10. Notices delivered by mail are considered received three days after mailing in accordance with this Article 10. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 11. AUTHORITY

Execution of this Agreement by Consultant is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Consultant have been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

ARTICLE 12. SPECIAL CONDITIONS REGARDING MBE/WBE COMMITMENT

In the performance of the Agreement, the Consultant must abide by the Minority Business Enterprise and Women Business Enterprise commitment requirements of the City of Chicago Municipal Code, Ch. 2-92, Section 2-92-420 et. seq. (1990) for the term of the Agreement, except to the extent waived by the Chief Procurement Officer. Such requirements are 25% participation by Minority Business Enterprises and 5% participation by Women Business Enterprises.

The special conditions governing Minority and Women Business Enterprises are attached hereto as Exhibit 3 and are hereby incorporated by reference as if fully set forth herein. Consultants are directed to examine the Special Conditions. At the time a City or State funded Task Order is issued, the Consultant must submit an MBE/WBE compliance plan, including MBE/WBE C-3 & D-3 documents, as part of its proposal for the Task Order.

The Consultant will be required to submit an MBE/WBE Utilization Report, copy attached, upon completion of each task order. The Utilization Report must be sent to the City of Chicago, Department of Procurement Services, Division of Contract Monitoring and Compliance, Room 400, City Hall, 121 North LaSalle Street, Chicago IL, 60602. The MBE/WBE Utilization Reports must reflect actual amounts paid to each MBE/WBE firm that participated on the Task Order. At the end of the Contract period, the MBE/WBE dollar participation achieved will be calculated against the total value of the combined City and State funded task orders to determine the total pa participation achieved toward the goal.

ARTICLE 13. DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

1. **Nondiscrimination.** Consultant or its Subcontractors must not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. Consultant must carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate. Consultant must include the provision set forth in this paragraph in all of its subcontracts.
2. **DBE Financial Institutions.** Consultant is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of Consultant's willingness to do business with DBEs. Information about such institutions is available in the City of Chicago's DBE Program document, which is available on-line at www.ci.chi.il.us/Procurement Services; a hard copy of the DBE Program document is available at the City of Chicago, Department of Procurement Services, City Hall, 121 N. LaSalle Street, Room 403, Chicago, IL 60602.

3. In the performance of this Agreement, including the procurement and lease of materials or equipment, Consultant must abide by the requirements of 49 C.F.R., Part 26, the Disadvantaged Business Enterprise Commitment requirements of the City of Chicago Municipal Code, Ch-2-92, Section 2-92-420 et seq. (1990), except to the extent waived by the Chief Procurement Officer, Consultant must comply with the "Special Conditions Regarding Disadvantaged Business Enterprise Commitment," set forth in Exhibit 3, and incorporated by reference here. Subconsultant's completed C-1 and Consultant's completed D-1 evidencing compliance are included in Exhibit 3 and will become binding upon Consultant upon acceptance by the Chief Procurement Officer. Consultant must utilize Disadvantaged Business Enterprise at the greater of the amounts listed in the aforementioned Schedule C-1 and D-1 or the amounts determined by applying the percentages listed there to all payments received from the City under this Agreement.

[Signature Page to follow]

Signature Page

SIGNED at Chicago, Illinois:

CITY OF CHICAGO

By: _____
Mayor

Comptroller

Chief Procurement Officer

Recommended By:

Commissioner

Consultant Name

By: _____

Its: _____
(President or Authorized Officer)

State of _____

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name/s of person/s) as _____ (type of authority, e.g., officer, trustee, etc.) of _____ (name of party on behalf of whom instrument was executed)

(Signature of Notary Public)

Specification No.:
Contract No.:
Requisition No.:
Vendor No.:

PROFESSIONAL SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS
FOR
PROFESSIONAL DESIGN ENGINEERING SERVICES
BETWEEN
VENDOR
AND
THE CITY OF CHICAGO
DEPARTMENT OF TRANSPORTATION



RAHM EMANUEL
MAYOR

(FHWA Funds)

**PROFESSIONAL SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS**

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- Exhibit 3 - DBE Commitments
- Schedules C-1
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- Exhibit 4 - Online Economic Disclosure Statement and Affidavit and Retained Parties

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into as of the _____ of _____ 2011 by and between _____ an _____ Corporation ("Consultant"), located at, _____ and the City of Chicago ("City"), a municipal corporation and home rule unit of local government existing under the laws of the State of Illinois, acting through its Department of Transportation ("Department").

The City and Consultant agree as follows:

TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

1.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"Additional Services" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 2.1 and Exhibit 1 and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 10.3 of this Agreement before Consultant is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"Agreement" means this Professional Services Agreement, including all exhibits, which are attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Chief Procurement Officer" means the Chief Procurement Officer of the City of Chicago and any representative duly authorized in writing to act on his behalf.

"Commissioner" means the Commissioner of the Department of Transportation, and any representative authorized in writing to act on the Commissioner's behalf.

"FHWA" means the Federal Highway Administration.

"FTA" means the Federal Transit Administration

"Services" means, collectively, the services, duties and responsibilities described in Article 2 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subcontractor" means any person or entity with whom Consultant contracts to provide any part of the Services, including subcontractors and subconsultants of any tier, whether or not in privity with Consultant.

1.2 Interpretation

- (a) The term **"include"** (in all its forms) means "include, without limitation" unless the context clearly states otherwise.
- (b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- (c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- (e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- (f) All references to a number of days mean calendar days, unless indicated otherwise.

1.3 Order of Precedence of Component Parts

In the event of any conflict or inconsistency between the terms set forth in Article 1 through Article 13 of this Agreement and the terms set forth in Exhibit 1 through Exhibit 4, including the Attachments to the Exhibits, the terms and provisions contained in Article 1 through 13 of this Agreement will take precedence over the terms and provisions contained in Exhibit 1 through Exhibit 4 except to the extent such terms and provisions are more favorable to the City.

Article 1 through 13 govern the legal relationship between the parties and Exhibit 1 and Exhibit 2 describe the Services Consultant is to perform under this Agreement, set forth the Key Personnel, set forth the time limits for Consultant's performance, set forth the insurance requirements for the project, and set forth the compensation schedule for Consultant. As a result, the City and Consultant agree that any terms or matters set forth in either Exhibit 1 or Exhibit 2, including the Attachments to the Exhibits, that do not exclusively pertain to defining the Services Consultant is to perform, the Key Personnel, the time limits for Consultant's performance, the insurance requirements, and the compensation schedule for Consultant are of no effect as to this Agreement and, regardless of whether or not the City approves such terms or matters, are not binding on the City, except to the extent that they would diminish the City's obligations under this Agreement or increase Consultant's obligations or liabilities under this Agreement.

ARTICLE 2. DUTIES AND RESPONSIBILITIES OF CONSULTANT

2.1 Scope of Services

Consultant must provide the Services described in Exhibit 1, Scope of Services and Schedule for Performance, and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. Consultant must provide the Services in accordance with the standards of performance set forth in Section 2.3. Consultant must provide and maintain at Consultant's own expense, the insurance coverages and requirements specified in Exhibit 1.

2.2 Deliverables

In carrying out its Services, Consultant must prepare or provide to the City various Deliverables. "Deliverables" include work product, such as designs, plans and specifications, written reviews, recommendations, reports and analyses, produced by Consultant for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Consultant has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Consultant of its failure. If Consultant does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 9.

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

2.3 Standard of Performance

Consultant must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement.

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

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

2.4 Personnel

(a) Adequate Staffing

Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Consultant must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Consultant to the City and with written consent of the City, which consent the City will not withhold unreasonably. If the City fails to object to the revision within 14 days after receiving the notice, then the revision will be considered accepted by the City.

(b) Key Personnel

Consultant must not reassign or replace Key Personnel without the written consent of the City, which consent the City will not unreasonably withhold. "Key Personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Section 2.4(b), and set forth in Exhibit 1, Attachment 1-A. The Department may at any time in writing notify Consultant that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Consultant must immediately suspend the services of the key person or persons and must replace him or her or them in accordance with the terms of this Agreement.

(c) Salaries and Wages

Consultant and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Consultant underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Consultant, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Consultant to the respective employees to whom they are due. The parties acknowledge that this Section 2.4(c) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

2.5 Indemnification

- (a) Consultant must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:
- (ii) injury, death or damage of or to any person or property;
 - (ii) any infringement or violation of any property right (including any patent, trademark or copyright);
 - (ii) Consultant's failure to perform or cause to be performed Consultant's covenants and obligations as and when required under this Agreement, including Consultant's failure to perform its obligations to any Subcontractor;
 - (ii) the City's exercise of its rights and remedies under Section 9.2 of this Agreement; and
 - (ii) injuries to or death of any employee of Consultant or any Subcontractor under any workers compensation statute.
- (b) "**Losses**" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Consultant's breach of this Agreement or to Consultant's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.
- (c) Consultant's obligations to indemnify, keep, and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses excludes that portion of Losses caused by any act, error or omission on the part of the particular City officer(s), representative(s), elected and appointed official(s), agent(s) or employee(s) seeking indemnification under this Section 2.5 if Consultant's indemnification would violate the provisions of the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 *et seq.*
- (d) At the City Corporation Counsel's option, Consultant, subject to Section 2.5(c) above, must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Consultant of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.
- (e) To the extent permissible by law, Consultant waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including

any claim by any employee of Consultant that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

- (f) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during Consultant's performance of Services beyond the term. Consultant acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Consultant's duties under this Agreement, including the insurance requirements in Exhibit 1 of this Agreement.

2.6 Ownership of Documents

All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Consultant under this Agreement are property of the City, including, as further described in Sections 2.7 and 2.8 below, all copyrights and patents inherent in them or their preparation. During performance of its Services, Consultant is responsible for any loss or damage to the Deliverables, data, findings or information while in Consultant's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Consultant. If not restorable, Consultant must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 2.5.

2.7 Federal and City Interests in Patents

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

2.8 Federal and City Interests in Copyright Ownership

- (a) Consultant and the City intend that, to the extent permitted by law, the Deliverables to be produced by Consultant at the City's instance and expense under this Agreement are conclusively deemed "**works made for hire**" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.
- (b) To the extent that any Deliverable does not qualify as a "work made for hire," Consultant hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law.

Consultant will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Consultant warrants to the City, its successors and assigns, that on the date of transfer Consultant is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Consultant further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Consultant warrants that the Deliverables are complete, entire and comprehensive within the standard of performance under Section 2.3 of this Agreement and that the Deliverables constitute a work of original authorship.

- (c) Notwithstanding the terms of subsections (a) and (b) above, the federal government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes:
 - (ii) The copyright in any Deliverable or work developed under this Agreement; and
 - (ii) Any rights of copyright to which Consultant or its Subcontractors purchase ownership with funds provided to it under this Agreement.
- (d) The City will not reuse the Deliverables to build other projects, without the written consent of Consultant.
- (e) Without limiting any of its obligations under Section 2.8 of this Agreement, Consultant must, upon request by the federal government, indemnify, save and hold harmless the federal

government and its 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 Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any Deliverables furnished under this Agreement. Consultant is not required to indemnify the federal government for any such liability arising out of the wrongful acts of employees or agents of the federal government.

2.9 Visual Artists Rights Act Waiver

Consultant waives any and all rights, in any work of visual art that may be provided pursuant to this Agreement, that may be granted or conferred under Section 106A and Section 113 of the United States Copyright Act (17 U.S.C. § 101 *et seq.*) (the "*Copyright Act*").

2.10 Records and Audits

(a) Records

- (i) Consultant must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, to the City promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. In the event of the failure by Consultant to make such delivery upon demand, then and in that event, Consultant must pay to the City any damages the City may sustain by reason of Consultant's failure.
- (ii) Consultant must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement. Consultant must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 11.

(b) Audits

- (i) Consultant and any of Consultant's Subcontractors must furnish the Department with all information that may be requested pertaining to the performance and cost of the Services. Consultant must maintain records showing actual time devoted and costs incurred. Consultant must keep books, documents, paper, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of its Services.
- (ii) To the extent that Consultant conducts any business operations separate and apart from the Services required under this Agreement using, for example, personnel, equipment, supplies or facilities also used in connection with this Agreement, then

Consultant must maintain and make similarly available to the City detailed records supporting Consultant's allocation to this Agreement of the costs and expenses attributable to any such shared usages.

- (ii) Consultant must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- (ii) No provision in this Agreement 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 which the City would have had in the absence of such provisions.
- (v) The City may in its sole discretion audit the records of Consultant or its Subcontractors, or both, at any time during the term of this Agreement or within five years after the Agreement ends, in connection with the goods, work, or services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that Consultant or any of its Subcontractors has overcharged the City in the audited period, the City will notify Consultant. Consultant must then promptly reimburse the City for any amounts the City has paid Consultant due to the overcharges and also some or all of the cost of the audit, as follows:
 - A. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Agreement prices, of the goods, work, or services provided in the audited period, then the Consultant 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;
 - B. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Agreement prices, of the goods, work, or services provided in the audited period, then Consultant must reimburse the City for the full cost of the audit and of each subsequent audit.
 - C. Failure of Consultant to reimburse the City in accordance with subsection A or B above is an event of default under this Agreement, and Consultant will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

2.11 Confidentiality

- (a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Consultant under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Consultant must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Consultant by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Consultant must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.
- (b) Consultant must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner.
- (c) If Consultant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Consultant's possession by reason of this Agreement, Consultant must immediately give notice to the Commissioner and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Consultant, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

2.12 Assignments and Subcontracts

Consultant must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement or any part of it, unless otherwise provided for in this Agreement or without the express written consent of the Chief Procurement Officer and the Department. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Chief Procurement Officer operate to relieve Consultant of any of its obligations or liabilities under this Agreement.

All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to observe or perform the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Consultant personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Consultant of any of its obligations or liabilities under this Agreement.

Consultant, upon entering into any agreement with a Subcontractor, must furnish upon request of the Chief Procurement Officer or the Department a copy of its agreement. All subcontracts must contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department and the Chief Procurement Officer. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

Consultant must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the Chief Procurement Officer. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Consultant under this Agreement, without such prior written approval, has no effect upon the City.

Under the Municipal Code of Chicago, ch. 2-92, Section 2-92-245, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement. Any such payment has the same effect as if the City had paid Consultant that amount directly. Such payment by the City to Consultant's Subcontractor under no circumstances operates to relieve Consultant of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

ARTICLE 3. TIME LIMITS FOR PERFORMANCE

3.1 Schedule for Performance

This Agreement takes effect as of the date of its execution by the City ("**Effective Date**"). Consultant must complete the Services as required by the schedule in Exhibit 1.

3.2 Timeliness of Performance

- (a) Consultant must perform the Services as expeditiously as is consistent with professional skill and care and must provide the Services and Deliverables within the schedule required under Exhibit 1 of this Agreement.
- (b) Neither Consultant nor Consultant's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Consultant by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

ARTICLE 4. COMPENSATION

4.1 Basis of Payment

The City will compensate Consultant according to the Schedule of Compensation contained in Exhibit 2 of this Agreement for the successful completion of the Services.

Notwithstanding anything in the Schedule of Compensation set forth in Exhibit 2 to the contrary, Consultant's compensation under this Agreement is limited to those amounts allowable and allocable to this Agreement under 48 C.F.R. Part 31, Subpart 31.6 (the Federal Acquisition Regulation), OMB Circular A-87 (incorporated by reference into 48 C.F.R. Part 31, Subpart 31.6), and the cost principles set forth in 48 C.F.R. Part 31, Subpart 31.2, but only to the extent that the cost principles in Subpart 31.2 do not conflict with the terms of 48 C.F.R. Part 31, Subpart 31.6 and OMB Circular A-87. To the extent that an audit reveals that Consultant has received payment in excess of such amounts, the City may offset such excess payments against any future payments due to Consultant and, if no future payments are due or if future payments are less than such excess, Consultant must promptly refund the amount of the excess payments to the City.

4.2 Method of Payment

Consultant must submit monthly invoices to the City for labor and other direct and indirect costs as billed, as outlined in the Schedule of Compensation in Exhibit 2. The invoices must be signed, dated, reference the City contract number and name, and must be in such other detail as the City requests. If Consultant has more than one agreement with the City, Consultant must prepare and submit separate invoices for each agreement. Consultant must not submit invoices for less than \$500 unless a particular invoice is for last payment related to closeout of the Services.

The City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

4.3 Prompt Payment

(a) **Timely Progress Payments; Return of Subcontractor Retainage**

- (ii) Consultant must remit payment to its Subcontractors listed on a pay request to the City within 5 business days after receiving payment on the pay request from the City. Consultant must require its Subcontractors for the Services to pay their lower tier Subcontractors within 5 business days after receiving payment from Consultant, and Consultant must state these requirements in all subcontracts and purchase orders. The obligation to make prompt payment to Subcontractors is a continuing condition of Consultant's participation in the Services that are part of this Agreement, and of its Subcontractors.
- (ii) Subject to the provisions of Section 4.3(b), below, Consultant must return retainage, if any, to each Subcontractor within 14 days after the Subcontractor's services have been completed or the materials delivered to the City (or off-site, if this Agreement permits payment for off-site delivery), regardless of whether the Services are finished and whether Consultant has received payment from the City for the retainage withheld.

- (ii) For prompt payment, the term "Subcontractor" is intended to include suppliers. For purposes of calculating the date by which payment to Subcontractors must be made, payment is considered received 6 days after the check date. To the extent feasible, to facilitate the flow of information to Subcontractors, the City will post at the Project Manager office and maintain at the Records and Estimates Section of the Department and at the Resident Engineer's office a list of Consultant's payment requests, including the Subcontractors identified in them, submitted to the City Comptroller for payment and the date of payments made to Consultant by the City.
 - (ii) If Consultant fails to incorporate these provisions in all subcontracts and purchase orders, the provisions of this Section 4.3 are deemed to be incorporated in all subcontracts and purchase orders.
- (b) Timely Submittal of Pay Requests; Disputes
- (ii) Consultant must not delay or refuse to timely submit pay requests for a Subcontractor's services or materials, and the City may construe such delay or refusal as Consultant's failure to act in good faith. "Timely," in this context, means within 30 calendar days of the Subcontractor's services that the Subcontractor has invoiced have been completed or the materials delivered to the City (or off -site, if this Agreement permits payment for off-site delivery). In addition, Consultant must not delay or postpone payment for any undisputed portion of a Subcontractor's invoice or in connection with claims or disputes involving different pay requests for the same services or different services.
 - (ii) If, despite Consultant's due diligence with respect to the performance of a Subcontractor for which a pay request is submitted, new information is received, after submitting the pay request to the City, that discloses that the Subcontractor's services or materials were not in accordance with the requirements of the Agreement, or that the Subcontractor has committed fraud or is otherwise not entitled to the payment sought, Consultant may delay or postpone payment to the Subcontractor, but only if all of the following conditions are met:
 - A. The Subcontractor's non-complying services or materials are those that are the subject of the particular pay request; and
 - B. Consultant is acting in good faith and not in retaliation for a Subcontractor's exercising legal or contractual rights.
 - (ii) When a Subcontractor has completed its services, if Consultant determines that a Subcontractor's services or materials were not in accordance with the requirements of the Agreement, or the Subcontractor has committed fraud or is otherwise not entitled to the payment sought, Consultant may delay or postpone timely return to the Subcontractor, but only if all of the following conditions are met:

- A. Consultant has substantial grounds for and has acted reasonably in its determination; and
 - B. Consultant is acting in good faith and not in retaliation for a Subcontractor's exercising legal or contractual rights.
- (c) Special Remedies for Non-Compliance with Prompt Payment
- (ii) If Consultant does not pay any Subcontractor listed on a pay request or returned a Subcontractor's retainage within the time limits required under this Section 4.3 and Consultant has not met the applicable notification and consent requirements above, Consultant must pay the Subcontractor an additional 2% of the unpaid portion of any such payment each month, prorated per diem for any partial month, that Consultant fails or refuses to pay the Subcontractor, and Consultant's terms with its Subcontractors must provide for this additional payment to be made.
 - (ii) These provisions do not confer any rights in Subcontractors against the City. Nothing in this Section 4.3 is to be construed to limit the rights of and remedies available to the City, including but not limited to various rights under Section 9.2
 - (ii) If Consultant is found not to be making timely payments to its Subcontractors on a continuous basis, the City may consider this to be an event of default under the terms of this Agreement.

4.4 Criteria for Payment

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

In the event of a dispute between Consultant and the City as to whether any particular charge will be paid, or as to whether the amount of such charge is reasonable, allocable to the Services, or allowable, Consultant must, and the Department may, jointly or individually, refer such dispute to the Chief Procurement Officer for resolution in accordance with the Disputes section of this Agreement. The City will not withhold payment for undisputed sums on such invoice while a dispute is being resolved. All invoice disputes will be handled as described in Section B.3 of Exhibit 2

4.5 Funding

The source of funds for payments under this Agreement is the Fund Number set forth in Exhibit 2. Payments under this Agreement will not be made or due to Consultant in excess of the dollar amount set forth in Exhibit 2 without a written amendment in accordance with Section 10.3.

4.6 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 Agreement, then the City will notify Consultant in writing of that occurrence, and this Agreement 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 Agreement are exhausted. Payments for Services completed to the date of notification will be made to Consultant except that no payments will be made or due to Consultant under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.

4.7 Subcontractor Payments

- (a) Contractor must submit a status report of Subcontractor payments with each invoice for the duration of the contract on the "Subcontractor Payment Certification" form required by the City. The form can be downloaded from the City's website at http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/subcompliance.pdf. The statement must list the following for Contractor and for each Subcontractor and supplier for the period for which payment is requested:
- (i) Total amount invoiced by the Contractor for the prior month;
 - (ii) The name of each particular Subcontractor or supplier utilized during the prior month;
 - (iii) Indication if the Subcontractor or supplier is acting as an MBE, WBE, DBE, or non-certified firm on this contract;
 - (iv) The vendor/supplier number of each Subcontractor or supplier;
 - (v) Total amount invoiced that is to be paid to each Subcontractor or supplier.
- (b) If a Subcontractor has satisfactorily completed its Work, or provided specified materials in accordance with the requirements of the Contract, Contractor shall pay Subcontractor for such work or materials within 14 days of Contractor receiving payment from the City.

ARTICLE 5. DISPUTES

Except as otherwise provided in this Agreement, Consultant must and the Commissioner may bring any dispute concerning a question of fact arising under this Agreement which is not disposed of to the Chief Procurement Officer for decision based upon written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room.) The Chief Procurement Officer will reduce his decision to writing and mail or otherwise furnish a copy of it to Consultant. The decision of the Chief Procurement Officer is final and binding. If Consultant does not agree with the decision of the Chief Procurement Officer, the sole and exclusive remedy is judicial review by a common law writ of certiorari.

ARTICLE 6. COMPLIANCE WITH ALL LAWS

6.1 Compliance with All Laws Generally

- (a) Consultant must observe and 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 Agreement, including those set forth in this Article 6, and Consultant must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Consultant must require all Subcontractors to do so, also. Consultant must have filed, within 1 year prior to the Effective Date, an executed Economic Disclosure Statement and Affidavit ("Disclosure Affidavit") with the Chief Procurement Officer and must execute a No Changes Affidavit and a Disclosure of Retained Parties in the forms incorporated into this Agreement as Exhibit 4. Notwithstanding acceptance by the City of the Disclosure Affidavit, failure of the Disclosure Affidavit to include all information required under the Municipal Code renders this Agreement voidable at the option of the City.
- (b) Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

6.2 Nondiscrimination

- (a) Consultant

In performing its Services under this Agreement, Consultant must comply with applicable laws prohibiting discrimination against individuals and groups.

- (ii) Federal Requirements

In performing its Services under this Agreement, Consultant must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Consultant's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Civil

Rights Act of 1964, 42 U.S.C. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); Drug Abuse Office and Treatment Act of 1972, P.L. 92-255, as amended; and Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, P.L. 91-616, as amended; and all other applicable federal statutes, regulations and other laws.

(ii) State Requirements

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A. Furthermore, Consultant must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended; and all other applicable state statutes, regulations and other laws.

(ii) City Requirements

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules. Further, Consultant must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(b) Subcontractors

Consultant must incorporate this Section 6.2 by reference in all agreements entered into with Subcontractors and labor organizations that furnish skilled, unskilled and craft union skilled labor, or any other services in connection with this Agreement.

6.3 Compliance with the Americans with Disabilities Act and Other Laws Concerning Accessibility

Consultant covenants that all designs, plans and drawings produced or utilized under this Agreement will address and comply with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities or environmentally limited persons including the following: the Americans with Disabilities Act of 1990, 42 U.S.C. §

12101 *et seq.* and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"); the Architectural Barriers Act, Pub. L. 90-480 (1968), and the Uniform Federal Accessibility Standards ("UFAS"); and the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.*, and all regulations promulgated thereunder, *see* Illinois Administrative Code, Title 71, Chapter 1, Section 400.110.

If the above standards are inconsistent, Consultant must assure that its designs, plans, and drawings comply with the standard providing the greatest accessibility. Also, Consultant must, prior to construction, review the plans and specifications to insure compliance with these standards. If Consultant fails to comply with the foregoing standards, the City may, without limiting any of its remedies set forth in Section 9.2 or otherwise available at law, in equity or by statute, require Consultant to perform again, at no expense, all Services required to be re-performed as a direct or indirect result of such failure.

6.4 Subcontractors 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.

6.5 Inspector General

It is the duty of any bidder, proposer or Consultant, 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, Consultant, Subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code of Chicago. Consultant understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

6.6 Business Relationships with Elected Officials

Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City, 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 a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement. The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code of Chicago.

Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

6.7 Prohibition on Certain Contributions - Mayoral Executive Order No. 05-1

Contractor agrees that Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5 percent ("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 percent ("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 not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this bid, proposal or Agreement by Contractor, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Contractor and the City, or (iv) during any period while an extension of this Agreement or any Other Contract 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 Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor agrees that it 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.

Contractor agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

Contractor agrees that a 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. 05-1 constitutes a breach and default under this Agreement, 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 Agreement, 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. 05-1 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Contractor's bid.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Contractor is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (E) two of the following four conditions exist for the partners:
 - 1. The partners have been residing together for at least 12 months.
 - 2. The partners have common or joint ownership of a residence.
 - 3. The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
 - 4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

6.8 Chicago "Living Wage" Ordinance

- (a) Section 2-92-610 of the Municipal Code of Chicago provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("Covered Employees"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:
- (i) If Consultant has 25 or more full-time employees, and
 - (ii) If at any time during the performance of this Agreement, Consultant and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then
 - (iii) Consultant 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 Services performed under this Agreement.
- (b) Consultant's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.
- (c) As of July 2009, the Base Wage became \$11.03, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four 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 divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Agreement, Consultant 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 Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Consultant and all other Performing Parties must pay the prevailing wage rates.
- (d) Consultant must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Consultant agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Consultant or by a Subcontractor, have been paid the

Base Wage, upon the City's request for such documentation. The City may independently audit Consultant and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

- (e) Not-for-Profit Corporations: If Consultant 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 subsections (a) through (d) above do not apply.

6.9 Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

ARTICLE 7. SPECIAL CONDITIONS

7.1 Warranties and Representations

In connection with signing and carrying out this Agreement, Consultant:

- (a) warrants that Consultant is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Consultant is not appropriately licensed;
- (b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors are competent to perform the Services required under this Agreement; and Consultant is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;
- (c) warrants that it will not knowingly use the services of any ineligible consultant or Subcontractor for any purpose in the performance of its Services under this Agreement;
- (d) warrants that Consultant is not in default at the time this Agreement is signed, and has not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City of Chicago, and has obtained warranties from its Subcontractors substantially similar in form and substance;

- (e) In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, 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 Chief Procurement Officer. 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.

- (f) 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.

- (g) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Consultant warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;
- (h) represents that Consultant and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1; and
- (i) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 8.1 and 8.3 of this Agreement.

7.2 Ethics

- (a) In addition to the foregoing warranties and representations, Consultant warrants:
 - (i) no officer, agent or employee of the City is employed by Consultant or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under the Municipal Code of Chicago (Chapter 2-156).
 - (ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to the prime Consultant or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.
- (b) Consultant further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

7.3 Joint and Several Liability

If Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Consultant is the joint and several obligation or undertaking of each such individual or other legal entity.

7.4 Business Documents

At the request of the City, Consultant must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

7.5 Conflicts of Interest

- (a) No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.
- (b) Consultant covenants that it, and to the best of its knowledge, its Subcontractors if any (collectively, "Consulting Parties"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.
- (c) Upon the request of the City, Consultant must disclose to the City its past client list and the names of any clients with whom it has an ongoing relationship. Consultant is not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Consultant's past or present clients. If Consultant becomes aware of a conflict, it must immediately stop work on the assignment causing the conflict and notify the City.
- (d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.
- (e) Consultant further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Services or have access to any confidential information, as defined in Section 2.11 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Consultant's Services for others conflict with the Services Consultant is to render for the City under this Agreement, Consultant must terminate such other services immediately upon request of the City.

7.6 Non-Liability of Public Officials

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

ARTICLE 8. SPECIAL CONDITIONS FOR FHWA AND FTA AGREEMENTS

8.1 Interest of Members of or Delegates to the United States Congress

In accordance with 41 U.S.C. § 22 Consultant must not admit any member of or delegate to the United States Congress to any share or part of this Agreement or to any benefit derived from it

8.2 False or Fraudulent Statements and Claims

- (a) Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Accordingly, Consultant, by signing this Agreement, certifies or affirms the truthfulness and accuracy of any statement it has made, it presently makes, or it may make pertaining to this Agreement, including without limitation any invoice for its Services. In addition to other penalties that may be applicable, Consultant also acknowledges that if it makes 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 Consultant to the extent the federal government (the "Government") considers appropriate.

8.3 Environmental Laws and Regulations

Consultant recognizes that many federal, state and City laws imposing environmental and resource conservation requirements may apply to this Agreement. Some, but not all, of the major laws that may affect the Agreement include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* Consultant also recognizes that U.S. Environmental Protection Agency, U.S. Department of Transportation, the Illinois Environmental Protection Agency, the City and other government agencies have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect this Agreement. Thus, Consultant must adhere to, and impose on its Subcontractors, any requirements as the federal, state and City governments may now or in the future promulgate. Requirements of particular concern are listed below. Consultant acknowledges that this list does not constitute Consultant's

entire obligation to meet all government environmental and resource conservation requirements. Consultant must include these provisions in all subcontracts.

1. **Environmental Protection**

Consultant must comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* in accordance 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; United States Department of Transportation statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and United States Department of Transportation regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

2. **Air Quality**

Consultant must comply with all applicable standards, orders, and regulations issued under the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Specifically, Consultant must comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. Consultant must report and require each Subcontractor to report any violation of these requirements resulting from any activity related to the implementation of this Agreement to the City and the appropriate U.S. EPA Regional Office.

3. **Clean Water**

Consultant must comply with all applicable standards, orders, or regulations issued under the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Consultant must report and require each Subcontractor to report any violation of these requirements resulting from any activity related to the implementation of this Agreement to the City and the appropriate U.S. EPA Regional Office.

4. **List of Violating Facilities**

Consultant must not use any facility in the performance of this Agreement or benefit any facility through its performance of this Agreement that is listed on the U.S. EPA List of Violating Facilities ("List"), and Consultant must promptly notify the City if Consultant receives any communication from the U.S. EPA that such a facility is under consideration for inclusion on the List.

5. Energy Policy and Conservation Act

To the extent applicable, Consultant must comply with the mandatory standards and policies relating to energy efficiency which are contained in the State of Illinois energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871.

8.4 Anti-Lobbying and Debarment

By its execution of Exhibit 4 Consultant certifies that it is in compliance with federal restrictions on lobbying and that neither it nor, if a joint venture, any of its joint venture members or their principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Consultant further agrees that it will include this clause and the certification without modification in all solicitations and subcontracts. If Consultant or any Subcontractor is unable to certify to this clause, it must provide a written explanation of its inability.

8.5 No Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by federal law, Consultant must comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any funds received under this Agreement to support subcontracts procured using exclusionary or discriminatory specifications.

8.6 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 Services, Consultant will use recycled products in performance of this Agreement pursuant to U.S. Environment Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, which implement Section 6002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, as amended.

8.7 Cargo Preference-Use of United States Flag Vessels

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

8.8 Buy America

To the extent applicable, Consultant must comply with 49 U.S.C. § 5323(j), and related regulations at 49 C.F.R. Part 661, and include clauses requiring its Subcontractors to comply with the requirements of 49 U.S.C. § 5323(j), and related regulations at 49 C.F.R. Part 661, in all of Consultant's subcontracts with its Subcontractors.

8.9 Fly America

Consultant must comply with 49 U.S.C. § 40118, and related regulations at 41 C.F.R. Part 301-10, regarding use of United States air carriers, and include clauses requiring its Subcontractors to comply with the requirements of 49 U.S.C. § 40118, and related regulations at 41 C.F.R. Part 301-10, in all of Consultant's subcontracts with its Subcontractors.

8.10 No Federal Government Obligations to Third Parties

Consultant agrees that, absent the federal government's express written consent, the federal government is not subject to any obligations or liabilities to Consultant or any other person or entity 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 Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation or agreement, the federal government continues to have no obligations or liabilities to any party, including Consultant.

8.11 Contract Work Hours and Safety Standards Act

Consultant must comply, and must cause its Subcontractors to comply, with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 *et seq.*, to the extent applicable. In accordance with the Contract Work Hours and Safety Standards Act, Consultant agrees that, if applicable, the wages of every laborer and mechanic employed by Consultant or its Subcontractors during the performance of this Agreement will be computed on the basis of a standard work week of 40 hours, and that each laborer and mechanic 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 a work week. Consultant's knowledge Department that determinations pertaining to these requirements will be made in accordance with applicable U.S. of Labor regulations, "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.

ARTICLE 9. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET

9.1 Events of Default Defined

The following constitute events of default:

2. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Consultant to the City.
3. Consultant's material failure to perform any of its obligations under this Agreement including the following:

- a. Failure due to a reason or circumstances within Consultant's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;
 - b. Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the Chief Procurement Officer or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - c. Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;
 - d. Discontinuance of the Services for reasons within Consultant's reasonable control; and
 - e. Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination.
4. Any change in ownership or control of Consultant without the prior written approval of the Chief Procurement Officer, which approval the Chief Procurement Officer will not unreasonably withhold.
 5. Consultant's default under any other agreement it may presently have or may enter into with the City during the life of this Agreement. Consultant acknowledges and agrees that in the event of a default under this Agreement the City may also declare a default under any such other agreements.
 6. Failure to comply with Section 6.1 in the performance of the Agreement.
 7. Consultant's repeated or continued violations of City ordinances unrelated to performance under the Agreement that in the opinion of the Chief Procurement Officer indicate a willful or reckless disregard for City laws and regulations.

9.2 Remedies

The occurrence of any event of default permits the City, at the City's sole option, to declare Consultant in default. The Chief Procurement Officer may in his sole discretion give Consultant an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days, unless extended by the Chief Procurement Officer. Whether to declare Consultant 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 the Disputes provision of this Agreement.

The Chief Procurement Officer will give Consultant written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice"). If the Chief Procurement Officer gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate (but not the decision not to terminate) is final and effective upon giving the notice. The Chief Procurement Officer may give a Default Notice if Consultant fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 9.2 and Article 11, Consultant must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City. After giving a Default Notice, the City may invoke any or all of the following remedies, individually or collectively:

9. The right to take over and complete the Services, or any part of them, at Consultant's expense and as agent for Consultant, either directly or through others, and bill Consultant for the cost of the Services, and Consultant must pay the difference between the total amount of this bill and the amount the City would have paid Consultant under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for Consultant under this Section 9.2;
2. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
3. The right of specific performance, an injunction or any other appropriate equitable remedy;
4. The right to money damages;
5. The right to withhold all or any part of Consultant's compensation under this Agreement;
6. The right to deem Consultant non-responsible in future contracts to be awarded by the City.

If the Chief Procurement Officer considers it to be in the City's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Consultant to continue to provide the Services despite one or more events of default, Consultant is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its right

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

9.3 Early Termination

In addition to termination under Sections 9.1 and 9.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Consultant. The City will give notice to Consultant in accordance with the provisions of Article 11. The effective date of termination will be the date the notice is received by Consultant or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 10 days after the date the notice is considered received as provided under Article 11 of this Agreement (if no date is given) or upon the effective date stated in the notice.

After the notice is received, Consultant must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 4, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Consultant must attempt to agree on the amount of compensation to be paid to Consultant, but if not agreed on, the dispute must be settled in accordance with Article 5 of this Agreement. The payment so made to Consultant is in full settlement for all Services satisfactorily performed under this Agreement.

Consultant must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Consultant will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against Consultant or the City to the extent inconsistent with this provision.

If the City's election to terminate this Agreement for default under Sections 9.1 and 8.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9.3.

9.4 Suspension

The City may at any time request that Consultant suspend its Services, or any part of them, by giving 15 days prior written notice to Consultant or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Consultant must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Chief Procurement Officer and such equitable extension of time as may be mutually agreed upon by the Chief Procurement Officer and Consultant when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Consultant as a result of recommencing the Services must be treated in accordance with the compensation provisions under Exhibit 2 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Consultant by written notice to the City may treat the suspension as an early termination of this Agreement under Section 9.3.

9.5 Right to Offset

A. In connection with performance under this Agreement:

The City may offset any excess costs incurred:

- a. if the City terminates this Agreement for default or any other reason resulting from Consultant's performance or non-performance;
- b. if the City exercises any of its remedies under Section 9.2 of this Agreement; or
- c. if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these excess costs by use of any payment due for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those excess costs, Consultant is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

B. In connection with Section 2-92-380 of the Municipal Code of Chicago:

- (i) In accordance with Section 2-92-380 of the Municipal Code of Chicago and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set

off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by Consultant to the City. For purposes of this Section 9.5 "**outstanding parking violation complaint**" means a parking ticket, notice of parking violation or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint. "**Debt**" means a specified sum of money owed to the City for which the period granted for payment has expired.

- (ii) Notwithstanding the provisions of the above subsection, no such debt(s) or outstanding parking violation complaint(s) will be offset from the price or compensation due under this Agreement if one or more of the following conditions are met:

- A. Consultant has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking violation complaints and/or debts owed to the City and Consultant is in compliance with the agreement; or
 - B. Consultant is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
 - C. Consultant has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.
- C. In connection with any liquidated or unliquidated claims against Consultant:

Without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against Consultant unrelated to this Agreement. When the City's claims against Consultant are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse Consultant to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

ARTICLE 10. GENERAL CONDITIONS

10.1 Entire Agreement

1. General

This Agreement, and the exhibits, which are attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

2. No Collateral Agreements

Consultant acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Consultant to enter into this Agreement or has been relied upon by Consultant, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi)

any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with.

3. No Omissions

Consultant acknowledges that Consultant was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Consultant did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Consultant relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

10.2 Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

10.3 Amendments

No changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Consultant and by the Mayor, Comptroller, and Chief Procurement Officer of the City or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 10.3.

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

10.4 Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Consultant irrevocably submits itself to the original jurisdiction of those 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 Agreement. Service of process on Consultant may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the

office actually maintained by Consultant, or by personal delivery on any officer, director, or managing or general agent of Consultant. If any action is brought by Consultant against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

10.5 Severability

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

10.6 Assigns

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

10.7 Cooperation

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

10.8 Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Consultant's performance in any respect or waives a requirement or condition to either the City's or Consultant's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition.

No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Consultant in writing.

10.9 Independent Contractor

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

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

1. The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with Consultant performing the Services required under this Agreement.
2. Consultant is not entitled to membership in the City of Chicago Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City of Chicago.
3. The City of Chicago is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Consultant.

B. Shakman

- (i) Consultant may be subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.
- (ii) Consultant is aware that City policy prohibits City employees from directing any individual to apply for a position with Consultant, either as an employee or as a subcontractor, and from directing Consultant to hire an individual as an employee or as a subcontractor. Accordingly, Consultant must follow its own hiring and contacting procedures, without being influenced by City employees. Any and all personnel provided by Consultant under this Agreement are employees or subcontractors of Consultant, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the temporary medical workers/professionals provided by Consultant and the City.

- (iii) Consultant will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any temporary medical worker provided under this Agreement or offer employment as a temporary medical worker under this Agreement 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 Agreement, 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.
- (iv) In the event of any communication to Consultant by a City employee or City official in violation of Section 9.9(ii) above, or advocating a violation of Section 9.9 (ii) above, Consultant 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 Agreement.

10.10 Electronic Ordering and Invoices

The vendor shall cooperate in good faith with the City in implementing electronic ordering and invoicing, including but not limited to catalogs, purchase orders, releases, and invoices. Vendor shall accept electronic purchase orders and releases upon request of the Chief Procurement Officer. Vendor shall provide the City electronic catalogs, copies of invoices and other electronic documents upon request. The electronic ordering and invoice documents shall 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 vendor. Vendor shall ensure that the essential information, as determined by the Chief Procurement Officer, in the electronic document, corresponds to that information submitted by the vendor in its paper documents. The electronic documents shall be in addition to paper documents required by this contract, however, by written notice to the vendor, 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.

ARTICLE 11. NOTICES

Notices provided for in this Agreement, unless provided for otherwise in this Agreement, must be given in writing and may 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:

If to the City: City of Chicago Department of Transportation
30 North LaSalle Room 1100
Chicago, Illinois
Attention: Commissioner

and

Department of Procurement Services
Room 403, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Chief Procurement Officer

With Copies to: Department of Law
Room 600, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

If to Consultant: To the address set forth in the preamble of this Agreement

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 11. Notices delivered by mail are considered received three days after mailing in accordance with this Article 11. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 12. AUTHORITY

Execution of this Agreement by Consultant is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Consultant have been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

ARTICLE 13. DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

1. **Nondiscrimination.** Consultant or its Subcontractors must not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. Consultant must carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate. Consultant must include the provision set forth in this paragraph in all of its subcontracts.

2. **DBE Financial Institutions.** Consultant is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of Consultant's willingness to do business with DBEs. Information about such institutions is available in the City of Chicago's DBE Program document, which is available on-line at www.ci.chi.il.us/Procurement Services; a hard copy of the DBE Program document is available at the City of Chicago, Department of Procurement Services, City Hall, 121 N. LaSalle Street, Room 403, Chicago, IL 60602.

3. In the performance of this Agreement, including the procurement and lease of materials or equipment, Consultant must abide by the requirements of 49 C.F.R., Part 26, the Disadvantaged Business Enterprise Commitment requirements of the City of Chicago Municipal Code, Ch-2-92, Section 2-92-420 et seq. (1990), except to the extent waived by the Chief Procurement Officer. Consultant must comply with the "Special Conditions Regarding Disadvantaged Business Enterprise Commitment," set forth in Exhibit 3, and 10 incorporated by reference here. Subconsultant's completed C-1 and Consultant's completed D-1 evidencing compliance are included in Exhibit 3 and will become binding upon Consultant upon acceptance by the Chief Procurement Officer. Consultant must utilize Disadvantaged Business Enterprise at the greater of the amounts listed in the aforementioned Schedule C-1 and D-1 or the amounts determined by applying the percentages listed there to all payments received from the City under this Agreement.

[Signature Page to follow]

Signature Page

SIGNED at Chicago, Illinois:

CITY OF CHICAGO

By: _____
Mayor

Comptroller

Chief Procurement Officer

Recommended By:

Commissioner

Consultant Name

By: _____

Its: _____
(President or Authorized Officer)

State of _____

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name/s of person/s) as _____ (type of authority, e.g., officer, trustee, etc.) of _____ (name of party on behalf of whom instrument was executed)

(Signature of Notary Public)