

**Agreement for Special Service Area # 52**

between

**the CITY OF CHICAGO**

and

**51<sup>ST</sup> STREET BUSINESS ASSOCIATION**

Effective January 1, 2020 through December 31, 2020

**Lori Lightfoot  
Mayor**

AGREEMENT-SPECIFIC INFORMATION

Date Agreement entered into (see Agreement Preamble): \_\_\_\_\_, 20\_\_\_\_\_

Name of Contractor (see Agreement Preamble): 51<sup>st</sup> Street Business Association

Contractor's State and Form of Organization or Incorporation (see Agreement Preamble):  
Illinois, not-for-profit corporation

Special Service Area Number (see Agreement Recitals): \_\_\_\_\_ 52 \_\_\_\_\_

Service Tax not to exceed the following percentage of the equalized assessed value of all property within the Area (see Agreement Recitals): \_\_\_\_\_ 3.00% \_\_\_\_\_

City Council authorization date (see Agreement Recitals): \_\_\_\_\_ December 18, 2019 \_\_\_\_\_

Establishment Ordinance date (see Agreement Article 2): \_\_\_\_\_ November 16, 2011 \_\_\_\_\_

Surplus TIF Funds fund number (see Agreement Article 2): \_\_\_\_\_ 0D02 \_\_\_\_\_

Service Tax Funds amount (see Agreement Section 5.01(a)): \_\_\_\_\_ \$43,421 \_\_\_\_\_

Surplus Funds amount (see Agreement Section 5.01(b)): \_\_\_\_\_ \$1,500 \_\_\_\_\_

Surplus TIF Funds amount (see Agreement Section 5.01(c)): \_\_\_\_\_ \$38,092 \_\_\_\_\_

Late Collections amount (see Agreement Section 5.01(d)): \_\_\_\_\_ \$7,101 \_\_\_\_\_

Maximum compensation amount (see Agreement Section 5.01): \_\_\_\_\_ \$90,114 \_\_\_\_\_

Maximum amount (see Agreement Section 5.02): \_\_\_\_\_ \$90,114 \_\_\_\_\_

Bank name and address (see Agreement Section 5.03): on file with DPD and Comptroller

Wire transfer and Account numbers (see Agreement Section 5.03): on file with DPD and Comptroller

Fund number (see Agreement Section 5.05): \_\_\_\_\_ 0D02 \_\_\_\_\_

Special conditions (see Agreement Section 8.01): \_\_\_\_\_

Special Service Area Commission's address (see Agreement Article 9):  
220 E. 51<sup>st</sup> Street Chicago, Illinois 60615

Contractor's address (see Agreement Article 9): \_\_\_\_\_ 220 E. 51<sup>st</sup> Street Chicago, Illinois 60615 \_\_\_\_\_

Attention: Sandra Bivens

EXHIBITS 1 AND 2 TO THE AGREEMENT FOLLOW THIS AGREEMENT-SPECIFIC  
INFORMATION; THE SIGNATURE PAGE TO THE AGREEMENT FOLLOWS EXHIBITS 1  
AND 2

EXHIBIT 1

Scope of Services & Budget

## SCOPE OF WORK:

The Scope of Work for each Special Service Area (SSA) is broadly defined by the funded Categories listed in the annual Budget Summary page. If a SSA Commission recommends funding a line item within a previously unfunded category, a budget amendment ordinance must be introduced and approved by City Council. This action is required in order to expand the Scope of Work.

## REQUIRED DUTIES OF THE SERVICE PROVIDER:

**Website:** The Service Provider must maintain a webpage dedicated to the SSA which is easily identified with a link labeled “SSA” on the top or side banner on the home page of the Service Provider’s website.

The SSA webpage must contain the following information:

- Listing of Commission meetings for the year
- Meeting Notices and Agendas posted at least 48 hours prior to meetings
- Approved Meeting Minutes
- Current Service Provider Agreement
- Annual Audit (most-recent)
- Request for Proposals (RFPs)
- SSA Map
- Description of Services and Programs
- Other items as directed by the Commission

**Reports:** The Service Provider is required to complete and submit Quarterly Reports to the Department of Planning and Development (DPD) within 30 days of the end of each Quarter. These reports should be presented to and approved by the Commission prior to submission to DPD.

**Annual Audit:** The Service Provider is required to contract with an independent auditing firm to prepare audited financial statements of the preceding year, presented in the Government Model. The audit must be approved by the Commission and submitted to DPD on or before May 1st each year.

**Administration:** The Service Provider shall adhere to policies and procedures outlined in the SSA Program Guide and submission deadlines in the SSA Master Calendar. The Service Provider is responsible for ensuring services and programs listed in the SSA’s annual workplan and budget document are administered in a timely and accurate manner, including subcontracts with vendors. Any changes to line items must be approved by the Commission, and may require additional City Council authorization.

**Communication:** It is important that the Service Provider facilitate communication among its board of directors, the SSA Commission, all affected aldermen, SSA stakeholders, DPD, and the general public. All Commission meetings are open to the public and governed by the guidelines of the Open Meetings Act. The Service Provider shall brief all affected aldermen of SSA activities and proposed budgets.

**Recordkeeping:** The Service Provider shall maintain accurate and complete records of SSA activities, and shall provide documents in a timely manner, as requested by DPD. These records are subject to Freedom of Information Act (FOIA) requests which must be directed to DPD.

## Exhibit A Budget

### Special Service Area # 52

SSA Name: 51st Street

#### 2020 BUDGET SUMMARY

Budget and Services Period: January 1, 2020 through December 31, 2020

CATEGORY	2019 Levy		Carryover Funds	TIF Rebate Fund #	Estimated Late Collections and Interest	Total All Sources
	Collectable Levy	Estimated Loss Collection				
.00 Customer Attraction	\$9,400	\$7,101	\$1,500	\$10,220	\$7,101	\$35,322
.00 Public Way Activities	\$8,414	\$0	\$0	\$7,880	\$0	\$16,294
.00 Sustainability and Public Places	\$0	\$0	\$0	\$0	\$0	\$0
.00 Economic/ Business Development	\$9,036	\$0	\$0	\$18,392	\$0	\$27,428
.00 Safety Programs	\$0	\$0	\$0	\$0	\$0	\$0
.00 SSA Management	\$9,470	\$0	\$0	\$1,600	\$0	\$11,070
.00 Personnel	\$0	\$0		\$0	\$0	\$0
	<b>Sub-total</b>	\$36,320	\$7,101			
<b>GRAND TOTALS</b>	<b>Levy Total</b>	<b>\$43,421</b>	<b>\$1,500</b>	<b>\$38,092</b>	<b>\$7,101</b>	<b>\$90,114</b>

#### LEVY ANALYSIS

Estimated 2019 EAV:	\$3,520,978
Authorized Tax Rate Cap:	3.000%
Maximum Potential Levy limited by Rate Cap:	\$105,629
Requested 2019 Levy Amount:	\$43,421
Estimated Tax Rate to Generate 2018 Levy:	1.2332%

EXHIBIT 2

Economic Disclosure Statement and Affidavit

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

51<sup>st</sup> Street Business Association

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1.  the Applicant  
OR

2.  a legal entity currently holding, or anticipated to hold within six months after City action on the contract, transaction or other undertaking to which this EDS pertains (referred to below as the "Matter"), a direct or indirect interest in excess of 7.5% in the Applicant. State the Applicant's legal name: \_\_\_\_\_

OR

3.  a legal entity with a direct or indirect right of control of the Applicant (see Section II(B)(1))  
State the legal name of the entity in which the Disclosing Party holds a right of control:  
\_\_\_\_\_

B. Business address of the Disclosing Party: 220 E. 51<sup>st</sup> Street, Chicago, Il. 60615

Telephone: 773-285-3401 Fax: 773-675-8366 Email: the51ststreetbusinessassociation@yahoo.com

C. Name of contact person: Sandra Bivens

D. Federal Employer Identification No. (if you have one): 27-0881341

E. Brief description of the Matter to which this EDS pertains. (Include project number and location of property, if applicable):

To allow 51<sup>st</sup> Street Business Association to enter into a contract with the city of Chicago to provide services within SSA #52

F. Which City agency or department is requesting this EDS? Department of Planning and Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_



**SECTION II – DISCLOSURE OF OWNERSHIP INTERESTS**

**A. NATURE OF THE DISCLOSING PARTY**

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input type="checkbox"/> Limited liability company                  |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership              |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                              |
| <input type="checkbox"/> Sole proprietorship                      | <input checked="" type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3)?                |
| <input type="checkbox"/> Limited partnership                      | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)                     |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- Yes  No  Organized in Illinois

**B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:**

List below the full names and titles, if applicable, of: (i) all executive officers and all directors of the entity; (ii) for not-for-profit corporations, all members, if any, which are legal entities (if there are no such members, write "no members which are legal entities"); (iii) for trusts, estates or other similar entities, the trustee, executor, administrator, or similarly situated party; (iv) for general or limited partnerships, limited liability companies, limited liability partnerships or joint ventures, each general partner, managing member, manager or any other person or legal entity that directly or indirectly controls the day-to-day management of the Applicant.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name Title

"SEE ATTACHED" NO MEMBERS

2. Please provide the following information concerning each person or legal entity having a direct or indirect, current or prospective (i.e. within 6 months after City action) beneficial interest (including ownership) in excess of 7.5% of the Applicant. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a

# 51ST STREET BUSINESS ASSOCIATION

220 W. 51<sup>st</sup> Street  
Chicago, Illinois 60615

(773) 285-3401  
(773) 285-3407

Email: [51ststreetbusinessassociation@yahoo.com](mailto:51ststreetbusinessassociation@yahoo.com)

## BOARD OF DIRECTORS

Omar Sweiss, President  
Owner of Red Apple Foods

Justin Schindeldecker  
Vice President; DeNovo Banking Center Manager. PNC Bank

Tanya Lee, Bridging The Gap For Communal Living  
Secretary

Dr. Jennea Bivens, Member  
Founder of H.O.Y.C.E Youth Center

Sandra Bivens, Executive Director  
51<sup>st</sup> Street Business Association

limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state: None.

**NOTE:** Each legal entity listed below may be required to submit an EDS on its own behalf.

Name	Business Address	Percentage Interest in the Applicant
NONE		

**SECTION III -- INCOME OR COMPENSATION TO, OR OWNERSHIP BY, CITY ELECTED OFFICIALS**

Has the Disclosing Party provided any income or compensation to any City elected official during the 12-month period preceding the date of this EDS?  Yes  No

Does the Disclosing Party reasonably expect to provide any income or compensation to any City elected official during the 12-month period following the date of this EDS?  Yes  No

If yes to either of the above, please identify below the name(s) of such City elected official(s) and describe such income or compensation:

---

Does any City elected official or, to the best of the Disclosing Party's knowledge after reasonable inquiry, any City elected official's spouse or domestic partner, have a financial interest (as defined in Chapter 2-156 of the Municipal Code of Chicago (MCC) in the Disclosing Party?

Yes  No

If "yes," please identify below the name(s) of such City elected official(s) and/or spouse(s)/domestic partner(s) and describe the financial interest(s).

---

**SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist (as defined in MCC Chapter 2-156), accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll. If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained )	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: hourly rate or t.b.d. is not an acceptable response.
---	------------------	--	---

(SEE ATTACHED)

(Add sheets if necessary)

Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

**SECTION V -- CERTIFICATIONS**

**A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under MCC Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes     No     No person directly or indirectly owns 10% or more of the Disclosing Party.

If Yes, has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes     No

**B. FURTHER CERTIFICATIONS**

1. [This paragraph 1 applies only if the Matter is a contract being handled by the City's Department of Procurement Services.] In the 5-year period preceding the date of this EDS, neither the Disclosing Party nor any Affiliated Entity [see definition in (5) below] has engaged, in connection with the performance of any public contract, the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (i.e., an individual or entity with legal, auditing, investigative, or other similar skills, designated by a public agency to help the agency monitor the activity of specified agency vendors as well as help the vendors reform their business practices so they can be considered for agency contracts in the future, or continue with a contract in progress).

2. The Disclosing Party and its Affiliated Entities are not delinquent in the payment of any fine, fee, tax or other source of indebtedness owed to the City of Chicago, including, but not limited to, water and sewer charges, license fees, parking tickets, property taxes and sales taxes, nor is the Disclosing Party delinquent in the payment of any tax administered by the Illinois Department of Revenue.

# 51ST STREET BUSINESS ASSOCIATION

220 W. 51<sup>st</sup> Street  
Chicago, Illinois 60615

(773) 285-3401  
(773) 285-3407  
Email: 51ststreetbusinessassociation@yahoo.com

## 2020 Retained Parties

Name	Anticipated/Retained	Business Address	Relationship	Fees (\$\$ or %)	Estimated/Paid
TBD Audit	Anticipated	United States	Subcontractor	\$1550	Estimated
TBD Accountant/ Bookkeeper	Anticipated	United States	Subcontractor	\$600	Estimated
TBD Street Banners	Anticipated	United States	Subcontractor	\$1,500	Estimated
TBD Landscaping Programs	Anticipated	United States	Subcontractor/ Supplier	\$500	Estimated
TBD Sidewalk Maintenance	Anticipated	United States	Subcontractor	\$6864	Estimated
TBD SSA Designation	Anticipated	United States	Subcontractor	\$6300	Estimated

3. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II(B)(1) of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;

b. have not, during the 5 years before the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;

c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in subparagraph (b) above;

d. have not, during the 5 years before the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and

e. have not, during the 5 years before the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

4. The Disclosing Party understands and shall comply with the applicable requirements of MCC Chapters 2-56 (Inspector General) and 2-156 (Governmental Ethics).

5. Certifications (5), (6) and (7) concern:

- the Disclosing Party;

- any Contractor (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, Disclosure of Subcontractors and Other Retained Parties);

- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity). Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity. With respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;

- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor, nor any Agents have, during the 5 years before the date of this EDS, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the 5 years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;

b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. made an admission of such conduct described in subparagraph (a) or (b) above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions referenced in MCC Subsection 2-92-320(a)(4)(Contracts Requiring a Base Wage); (a)(5)(Debarment Regulations); or (a)(6)(Minimum Wage Ordinance).

6. Neither the Disclosing Party, nor any Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

7. Neither the Disclosing Party nor any Affiliated Entity is listed on a Sanctions List maintained by the United States Department of Commerce, State, or Treasury, or any successor federal agency.

8. [FOR APPLICANT ONLY] (i) Neither the Applicant nor any controlling person [see MCC Chapter 1-23, Article I for applicability and defined terms] of the Applicant is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If MCC Chapter 1-23, Article I applies to the Applicant, that Article's permanent compliance timeframe supersedes 5-year compliance timeframes in this Section V.

9. [FOR APPLICANT ONLY] The Applicant and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed as having an active exclusion by the U.S. EPA on the federal System for Award Management (SAM).

10. [FOR APPLICANT ONLY] The Applicant will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in Certifications (2) and (9) above and will not, without the prior written consent of the City, use any such

contractor/subcontractor that does not provide such certifications or that the Applicant has reason to believe has not provided or cannot provide truthful certifications.

11. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

12. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with N/A or none).

---

---

N/A

---

13. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a gift does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$25 per recipient, or (iii) a political contribution otherwise duly reported as required by law (if none, indicate with N/A or none). As to any gift listed below, please also list the name of the City recipient.

---

None

---

**C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION**

1. The Disclosing Party certifies that the Disclosing Party (check one)  
 is  is not

a "financial institution" as defined in MCC Section 2-32-455(b).

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in MCC Chapter 2-32. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in MCC Chapter 2-32. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."



If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in MCC Section 2-32-455(b)) is a predatory lender within the meaning of MCC Chapter 2-32, explain here (attach additional pages if necessary):

N/A

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING FINANCIAL INTEREST IN CITY BUSINESS

Any words or terms defined in MCC Chapter 2-156 have the same meanings if used in this Part D.

1. In accordance with MCC Section 2-156-110: To the best of the Disclosing Party's knowledge after reasonable inquiry, does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

[ ] Yes [ x ] No

NOTE: If you checked "Yes" to Item D(1), proceed to Items D(2) and D(3). If you checked "No" to Item D(1), skip Items D(2) and D(3) and proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

[ ] Yes [ ] No

3. If you checked "Yes" to Item D(1), provide the names and business addresses of the City officials or employees having such financial interest and identify the nature of the financial interest:

Name	Business Address	Nature of Financial Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

**E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

Please check either (1) or (2) below. If the Disclosing Party checks (2), the Disclosing Party must disclose below or in an attachment to this EDS all information required by (2). Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step (1) above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

---

---

---

**SECTION VI – CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS**

**NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.**

**A. CERTIFICATION REGARDING LOBBYING**

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995, as amended, who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

---

---

---

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995, as amended, have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in paragraph A(1) above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee

of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A(1) and A(2) above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities," as that term is defined in the Lobbying Disclosure Act of 1995, as amended.

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A(1) through A(4) above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

#### B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

Yes

No

If Yes, answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

Yes

No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes

No

Reports not required

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

Yes

No

If you checked No to question (1) or (2) above, please provide an explanation:

---

---

## SECTION VII -- FURTHER ACKNOWLEDGMENTS AND CERTIFICATION

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics Ordinance, MCC Chapter 2-156, imposes certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of this ordinance and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with this ordinance.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other City transactions. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided in, and appended to, this EDS may be made publicly available on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to MCC Chapter 1-23, Article I (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by MCC Chapter 1-23 and Section 2-154-020.

**CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS, and all applicable Appendices, on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS, and all applicable Appendices, are true, accurate and complete as of the date furnished to the City.

51<sup>st</sup> Street Business Association

(Print or type exact legal name of Disclosing Party)

By: Sandra Bivens  
(Sign here)

Sandra Bivens

(Print or type name of person signing)

Executive Director

(Print or type title of person signing)

Signed and sworn to before me on (date) 10/24/19,

at COOK County, IL (state).

Diana Backstrom  
Notary Public

Commission expires: 5-28-2023



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS  
AND DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5%. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under MCC Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof currently has a familial relationship with any elected city official or department head. A familial relationship exists if, as of the date this EDS is signed, the Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

Applicable Party means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5% ownership interest in the Disclosing Party. Principal officers means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any Applicable Party or any Spouse or Domestic Partner thereof currently have a familial relationship with an elected city official or department head?

Yes                       No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

---

---

---

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX B**

**BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5% (an "Owner"). It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

1. Pursuant to MCC Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

Yes                       No

2. If the Applicant is a legal entity publicly traded on any exchange, is any officer or director of the Applicant identified as a building code scofflaw or problem landlord pursuant to MCC Section 2-92-416?

Yes                       No                       The Applicant is not publicly traded on any exchange.

3. If yes to (1) or (2) above, please identify below the name of each person or legal entity identified as a building code scofflaw or problem landlord and the address of each building or buildings to which the pertinent code violations apply.

---

---

---

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX C**

**PROHIBITION ON WAGE & SALARY HISTORY SCREENING - CERTIFICATION**

This Appendix is to be completed only by an Applicant that is completing this EDS as a “contractor” as defined in MCC Section 2-92-385. That section, which should be consulted ([www.amlegal.com](http://www.amlegal.com)), generally covers a party to any agreement pursuant to which they: (i) receive City of Chicago funds in consideration for services, work or goods provided (including for legal or other professional services), or (ii) pay the City money for a license, grant or concession allowing them to conduct a business on City premises.

On behalf of an Applicant that is a contractor pursuant to MCC Section 2-92-385, I hereby certify that the Applicant is in compliance with MCC Section 2-92-385(b)(1) and (2), which prohibit: (i) screening job applicants based on their wage or salary history, or (ii) seeking job applicants’ wage or salary history from current or former employers. I also certify that the Applicant has adopted a policy that includes those prohibitions.

Yes

No

N/A – I am not an Applicant that is a “contractor” as defined in MCC Section 2-92-385.

This certification shall serve as the affidavit required by MCC Section 2-92-385(c)(1).

If you checked “no” to the above, please explain.

---

---

---



IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement on the date first set forth above, at Chicago, Illinois.

CITY OF CHICAGO

By: [Signature]  
Commissioner, Department of  
Planning and Development  
as of April 3, 2020

Recommended by:  
  
\_\_\_\_\_  
SSAC Chairperson

CONTRACTOR  
By: 51st Street Business Assoc  
Its: Manager of SSAC#52  
Attested By: Sandra Bivens  
Its: Executive Director

State of IL  
County of COOK

This instrument was acknowledged before me on 01/30/2020 (date)  
By Sandra Bivens (name/s of person/s) Executive Director as  
(type of authority, e.g., officer, trustee, etc.) of 51st Street Business  
Assoc (name of party on behalf of whom instrument was executed).



[Signature]  
(Signature of Notary Public)

THE AGREEMENT'S TABLE OF CONTENTS, PREAMBLE, RECITALS, BODY AND EXHIBITS 3 THROUGH 9 FOLLOW THIS SIGNATURE PAGE

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 INCORPORATION OF RECITALS.....	1
ARTICLE 2 DEFINITIONS.....	1
ARTICLE 3 DUTIES AND RESPONSIBILITIES OF CONTRACTOR .....	3
3.01 Scope of Services.....	3
3.02 Standard of Performance .....	3
3.03 Personnel.....	4
3.04 Nondiscrimination .....	5
3.05 Insurance.....	5
3.06 Indemnification.....	6
3.07 Records and Audits .....	7
3.08 Subcontracts and Assignments .....	10
3.09 License, Permits and Safety Considerations.....	10
3.10 Performance Bond .....	11
ARTICLE 4 TERM OF SERVICES .....	11
ARTICLE 5 COMPENSATION.....	11
5.01 Basis of Payment .....	11
5.02 Budget for Services.....	12
5.03 Method of Payment.....	12
5.04 Criteria for Payment .....	13
5.05 Funding.....	13
5.06 Non-Appropriation .....	13
3	
ARTICLE 6 SPECIAL CONDITIONS.....	13
6.01 Warranties and Representations .....	13
6.02 Economic Disclosure Statement.....	15
6.03 Conflict of Interest.....	15
6.04 Non-liability of Public Officials .....	16
6.05 Independent Contractor .....	16
6.06 Business Relationships with Elected Officials .....	17
6.07 Chicago “Living Wage” Ordinance.....	17
6.08 Deemed Inclusion .....	21
6.09 Environmental Warranties and Representations.....	21
6.10 EDS / Certification Regarding Suspension and Debarment .....	22
6.11 Ethics .....	22
6.12 MacBride Ordinance.....	22

6.13 Duty to Report Corrupt or Unlawful Activity .....	23
6.14 Policy Prohibiting Sexual Harassment .....	23
6.15 Policy on Non-Disclosure of Salary History .....	24
ARTICLE 7 EVENTS OF DEFAULT, REMEDIES, TERMINATION, RIGHT TO OFFSET, SUSPENSION .....	25
7.01 Events of Default Defined .....	25
7.02 Remedies.....	26
7.03 Right to Offset .....	26
7.04 Suspension .....	27
7.05 No Damages for Delay .....	27
7.06 Early Termination.....	27
ARTICLE 8 GENERAL CONDITIONS .....	27
8.01 Entire Agreement.....	27
8.02 Counterparts.....	28
8.03 Amendments .....	28
8.04 Compliance with All Laws .....	28
8.05 Compliance with ADA and Other Accessibility Laws.....	28
8.06 Assigns.....	29
8.07 Cooperation.....	29
8.08 Severability .....	29
8.09 Interpretation.....	29
8.10 Miscellaneous Provisions .....	29
8.11 Disputes .....	30
8.12 Contractor Affidavit.....	30
8.13 Prohibition on Certain Contributions.....	30
8.14 Firms Owned or Operated by Individuals with Disabilities .....	31
8.15 No Stated MBE/WBE Goals .....	32
8.16 Governing Law and Jurisdiction.....	32
ARTICLE 9 NOTICES.....	32
ARTICLE 10 CITY ACTION .....	33
ARTICLE 11 PLA .....	33

- EXHIBIT 1 Scope of Services & Budget (above)
- EXHIBIT 2 Economic Disclosure Statement and Affidavit (above)
- EXHIBIT 3 Insurance Provisions and Certificate of Insurance (below)
- EXHIBIT 4 Security Firm Insurance Provisions and Certificate of Insurance (below)
- EXHIBIT 5 Prevailing Wages (below)
- EXHIBIT 6 Performance Bond Form (below)
- EXHIBIT 7 Contractor Affidavit (below)
- EXHIBIT 8 Additional Audit Requirements (below)
- EXHIBIT 9 PLA (below)
- EXHIBIT 10 Sexual Harassment Policy Affidavit (below)
- EXHIBIT 11 Special Conditions Regarding MBE/WBE Commitment (below)

## AGREEMENT

This Agreement for the management of Special Service Area Number 52 is entered into as of the date set forth in the Agreement-Specific Information above by and between the Contractor named in the Agreement-Specific Information above ("Contractor"), and the City of Chicago ("City"), a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through the Special Service Area Commission at Chicago, Illinois.

## RECITALS

WHEREAS, special service areas may be established pursuant to Article VII, §§ 6(1) and 7(6) of the Constitution of the State of Illinois, and pursuant to the provisions of the Special Service Area Tax Law, 35 ILCS 200/27-5 et seq.; and

WHEREAS, the City Council of the City of Chicago ("City Council") has established a special service area known and designated as set forth in the Agreement-Specific Information above ("Area"), to provide special services in addition to those services provided generally by the City ("Special Services"). The City Council has further authorized the levy of an annual ad valorem real property tax in the Area sufficient to produce revenues required to provide those Special Services but not to exceed the percentage set forth in the Agreement-Specific Information above of the equalized assessed value of all property within the Area ("Service Tax"), all as provided in the Establishment Ordinance (hereinafter defined); and

WHEREAS, the City Council, on the date set forth in the Agreement-Specific Information above, authorized the levy of the Service Tax and appropriation of the funds therefrom for the Area for fiscal year 2020 for the provision of the Special Services in the Area, and the City wishes to provide that the Contractor, beginning on January 1, 2020, and continuing until December 31, 2020, may use those funds to provide the Services, subject to the terms and conditions of this Agreement; and

WHEREAS, the Contractor and the City desire to enter into this Agreement to provide such Special Services in the Area and the Contractor is ready, willing and able to enter into this Agreement to provide the Special Services to the full satisfaction of the City;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the City and the Contractor agree as follows:

### **ARTICLE 1 INCORPORATION OF RECITALS**

The recitals set forth above are incorporated by reference as if fully set forth herein.

### **ARTICLE 2 DEFINITIONS**

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

## ARTICLE 2 DEFINITIONS

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

**"Agreement"** means this Special Service Area Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

**"Commissioner"** means the Commissioner of the Department of Planning and Development or a duly authorized representative of the Commissioner of the Department of Planning and Development.

**"Construction"** means that work of a nature constituting "public works" as defined in 820 ILCS 130/2, such as landscaping and building activities, including but not limited to, physical building improvements, installations and other fixed works, but does not include pre-development work (design and preparation of specifications).

**"Days"** means business days in accordance with the City of Chicago business calendar.

**"Department"** means the City of Chicago Department of Planning and Development.

**"Establishment Ordinance"** means the ordinance enacted by City Council on the date set forth in the Agreement-Specific Information above, and any subsequent amendments thereto authorizing imposition of the Service Tax and setting forth the Special Services to be provided in the Area.

**"Late Collections"** means any tax revenue received by the City during the term of this Agreement attributable to the levy of the Service Tax in prior years in the SSA, along with any interest income on such revenue.

**"Risk Management Division"** means the Risk Management Division of the Department of Finance which is under the direction of the Comptroller of the City and is charged with reviewing and analyzing insurance and related liability matters for the City.

**"Security Firm"** means a business entity certified by the State of Illinois pursuant to the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004, 225 ILCS 447 et seq., and whose employees are licensed by the State of Illinois.

**"Services"** means, collectively, the services, duties and responsibilities described in Article 3 and Exhibit 1 (Scope of Services & Budget) of this Agreement and any revisions thereof and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

**"Service Tax Funds"** means the amount actually collected pursuant to the Service Tax.

**"Special Service Area Commission ('SSAC')"** means the body established pursuant to the Establishment Ordinance to prepare the Budget, identify a Contractor and supervise the provision of the Special Services in the Area.

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

**"Surplus Funds"**, also referred to as "Carry-Over Funds", means those Service Tax Funds already collected and disbursed to the Contractor in prior years for the provision of Special Services in the Area which remain unspent, including any interest earned thereon.

**"Surplus TIF Funds"** means a portion of those tax increment funds originally established by the City in the fund number set forth in the Agreement-Specific Information above in connection with redevelopment areas which remain unspent.

## **ARTICLE 3 DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

### **3.01 Scope of Services**

The Services which the Contractor shall provide include, but are not limited to, those described in this Article 3 and in Exhibit 1 which is attached hereto and incorporated by reference as if fully set forth here. The SSAC reserves the right to require the Contractor to perform revised services that are within the general scope of services of this Agreement and of the Special Services identified in the Establishment Ordinance subject to the same terms and conditions herein. Revised services are limited to changes or revisions to the line items in the Budget, do not affect the maximum compensation and require the prior written approval of the SSAC. The SSAC may, by written notice to the Department and the Contractor, delete or amend the figures contained and described in the Budget attached hereto as Exhibit 1 and incorporated by reference as if fully set forth herein. The Contractor shall provide the Services in accordance with the standards of performance set forth in Section 3.02.

### **3.02 Standard of Performance**

The Contractor shall perform all Services required of it with that degree of skill, care and diligence normally shown by a contractor performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided hereunder. The Contractor shall at all times use every reasonable effort on behalf of the City to assure timely and satisfactory rendering and completion of its Services.

The Contractor shall at all times act in the best interests of the City consistent with the professional obligations assumed by it in entering into this Agreement. The Contractor shall perform all Services in accordance with the terms and conditions of this Agreement and to the full satisfaction of the SSAC. The Contractor shall furnish efficient business administration and supervision to render and complete the Services at reasonable cost.

The Contractor shall 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. The Contractor remains responsible for the professional and technical accuracy of all Services provided, whether by the Contractor or its Subcontractors or others on its behalf.

If the SSAC determines that the Contractor has failed to comply with the foregoing standards, the Contractor shall perform again, at its own expense, all Services required to be reperformed as a direct or indirect result of such failure. Any review, approval, acceptance or payment for any or all of the Services by the City does not relieve the Contractor of its responsibility for the professional and technical accuracy of its Services. This provision in no way limits the City's rights against Contractor, either under this Agreement, at law or in equity.

### **3.03 Personnel**

#### **A. Key Personnel**

The Contractor shall, immediately upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension thereof an adequate staff of competent personnel, who are fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Contractor shall pay the salaries and wages due all its employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for such payroll deductions as are mandatory by law or are permitted under applicable law and regulations.

#### **B. Prevailing Wages**

If the Contractor engages in Construction, it shall comply, and shall cause all of its Subcontractors to comply by inserting appropriate provisions in their contracts, with 820 ILCS 130/0.01 et seq. regarding the payment of the general prevailing rate of hourly wage for all laborers, workers, and mechanics employed by or on behalf of the Contractor and all Subcontractors in connection with any and all Construction work. The prevailing rates of wages applicable at the time of execution of this Agreement are included in Exhibit 5 to this Agreement, which is incorporated by reference as though fully set forth herein.



### C. Illinois Workers, Veterans Preference and Steel Products

If the Contractor engages in Construction, it shall comply, and shall cause all of its Subcontractors to comply by inserting appropriate provisions in their contracts, with the Employment of Illinois Workers on Public Works Act, 30 ILCS 570/0.01 et seq., the Veterans Preference Act, 330 ILCS 55/0.01 et seq., and the Steel Products Procurement Act, 30 ILCS 30/565/1 et seq.

#### **3.04 Nondiscrimination**

##### **(a) Contractor**

##### **(i) Federal Requirements**

Contractor 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 Contractor'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.

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. § 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); and all other applicable federal statutes, regulations and other laws.

##### **(ii) State Requirements**

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor 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, Contractor must comply with the

Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq.(1990), as amended, and all other applicable state statues, regulations and other laws.

(iii) City Requirements

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor 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.

(b) **Subcontractors**

Contractor must incorporate all of this Section 3.04 by reference in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the federal, state and local agencies charged with enforcing such laws and regulations, including the Chicago Commission on Human Relations.

**3.05 Insurance**

The Contractor shall comply with the insurance provisions attached hereto as Exhibit 3 and incorporated by reference as if fully set forth herein, or such other insurance provisions as may be required in the reasonable judgment of the Risk Management Division. If the Contractor enters into a subcontract with a Security Firm such Security Firm shall comply with the insurance provisions attached hereto as Exhibit 4 and incorporated by reference as if fully set forth herein, or such other insurance provisions as may be required in the reasonable judgment of the Risk Management Division. If the Contractor subcontracts with a Subcontractor other than a Security Firm, such Subcontractor shall comply with the Contractor insurance provisions attached hereto as Exhibit 3.

The Risk Management Division may waive or reduce any of the insurance requirements set forth herein.

**3.06 Indemnification** A. On written notice from the City of Losses the City believes are Losses Arising under this Agreement as defined in this Section 3.06, the Contractor shall defend, indemnify, and hold completely harmless the City Indemnitees from and against such Losses, regardless of whether Contractor challenges the City's belief. The defense, indemnification and hold harmless obligations of the Contractor toward City Indemnitees remain an affirmative obligation of Contractor following the City's notice of Losses the City believes are Losses Arising under this Agreement, unless and until a court of competent jurisdiction finally determines otherwise and all opportunities for appeal have been exhausted or have lapsed.

B. For purposes of this Section 3.06,

**“City Indemnitees”** means, individually and collectively, the City of Chicago, its officials, agents, employees and SSAC members.

**“Losses”** means, individually and collectively, all kinds of liabilities, losses, suits, claims, damages, judgments, fines, and demands, including all reasonable costs for investigation, reasonable attorneys’ fees, court costs, and experts’ fees, arising by reason of injury or death of any person, damage to property, patent or copyright infringement.

**“Arising under this Agreement”** means (i) arising out of awarding this Agreement, (ii) arising out of the enforcement of this Agreement, including the enforcement of this indemnification provision; (iii) arising out of or in connection with Contractor’s performance or non-performance of this Agreement (including the acts or omission of Contractor, its officers, agents, employees, consultants, subcontractors, licensees, or invitees), any breach by any of them of any warranty made under this Agreement, or any failure by any of them to meet any applicable standard of performance under this Agreement; or (iv) any combination of any of the foregoing.

C. To the extent permissible by law, Contractor waives any limits on Contractor’s liability that it would otherwise have by virtue of the Worker’s Compensation Act or any other related law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Worker’s Compensation Act or under the Illinois Pension Code.

D. The City has the right, at its option and at its own expense, to participate in the defense of any suit without relieving Contractor of any of its obligations under this indemnity provision. The requirements set forth in this indemnity provision are separate from and not limited by the amount of insurance Contractor is required to obtain under this Agreement or by its bonds pursuant to other provisions in this Agreement. Further, the indemnitees contained in this provision survive the expiration or termination of this Agreement.

### **3.07 Records and Audits**

The Contractor shall deliver or cause to be delivered all documents, data, studies, reports, findings or information to the SSAC promptly in accordance with the time limits prescribed herein and if no time limit is specified, then upon reasonable demand therefore, or upon termination or completion of the Services hereunder.

The Contractor agrees to adopt at its own expense such financial controls, including, without limitation, the employment of a fiscal agent approved by the Commissioner, as determined by the Commissioner in his sole discretion and communicated in writing to the

Contractor after the date of execution of this Agreement, to ensure that the Contractor is fulfilling the terms of this Agreement.

The Contractor and any Subcontractors shall furnish the SSAC with semi-annual reports or provide such information as may be requested relative to the performance and cost of the Services. The Contractor shall maintain records showing actual time devoted and costs incurred. The Contractor shall keep books, documents, paper, records and accounts in connection with the Services open to inspection, copying, abstracting, transcription, and an independent audit by City employees or agents or third parties, and shall make these records available to the City and any other interested governmental agency at reasonable times during the performance of its Services. Contractor must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period that is the longer of (A) 5 years after the final payment made in connection with this Agreement (or, 6 years after the final payment made in connection with this Agreement, with respect to any records that are required to be maintained pursuant to the Contractor's obligations under the regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), which was part of the American Recovery and Reinvestment Act of 2009, specifically 45 C.F.R. § 164.530(j)), or (B) as directed by the Local Records Act (50 ILCS 205) and relevant records retention schedule. Contractor must not dispose of such records following the expiration of the relevant period without notification of and written approval from the City in accordance with Article 10.

In addition to the records to be stored by Contractor, all records that are possessed by Contractor in its service to the City to perform a governmental function are public records of the City pursuant to the Illinois Freedom of Information Act ("FOIA"), unless the records are exempt under the Act. FOIA requires that the City produce records in a very short period of time. If the Contractor receives a request from the City to produce records, the Contractor shall do so within 72 hours of the notice.

THE CONTRACTOR SHALL NOT COMMINGLE SERVICE TAX FUNDS WITH FUNDS FROM OTHER SOURCES, and to the extent that the Contractor conducts any business operations separate and apart from the Services hereunder using, for example, personnel, equipment, supplies or facilities also used in connection with this Agreement, then the Contractor shall maintain and make similarly available to the City detailed records supporting the Contractor's allocation to this Agreement of the costs and expenses attributable to any such shared usages.

The Contractor shall provide an annual audited financial statement (a "Third Party Audit") to the Department and the SSAC within 120 calendar days after the end of the calendar year, and the system of accounting shall be in accordance with generally accepted accounting principles and practices, consistently applied throughout. Contractor must comply with the requirements in Exhibit 8 with respect to any Third Party Audit. If any Third Party Audit shows that Contractor or any of its Subcontractors has overcharged the City in any period, the City will

notify Contractor, and Contractor must then promptly reimburse the City for any amounts the City has paid Contractor due to the overcharges. Any failure to comply with the audit requirements set forth in Exhibit 8 of the Agreement shall constitute an event of default under the Agreement. If such event of default is not corrected to the City's satisfaction within the cure period identified by the City, the City may incur costs to conduct any supplementary audit it deems necessary, and Contractor must then promptly reimburse the City for any such costs. 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 that the City would have had in the absence of such provisions.

The City may in its sole discretion audit the records of Contractor or its Subcontractors, or both, at any time during the term of this 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 Contractor or any of its Subcontractors has overcharged the City in the audited period, the City will notify Contractor. Contractor must then promptly reimburse the City for any amounts the City has paid Contractor due to the overcharges and 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 Contractor must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;

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 Contractor must reimburse the City for the full cost of the audit and of each subsequent audit.

If the City is unable to make a determination regarding overcharges to City as a result of Contractor's not having maintained records as required under this Agreement, Contractor must promptly reimburse the City for some or all of the cost of the audit, as determined in the sole discretion of the City. Failure of Contractor to promptly reimburse the City in accordance with this Section 3.07 is an event of default under Section 7.01 of this Agreement, and Contractor will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

### **3.08 Subcontracts and Assignments**

The Contractor shall not assign, delegate, subcontract or otherwise transfer all or any part of its rights or obligations under this Agreement or any part hereof, unless otherwise provided for herein or without the express written consent of the SSAC. The absence of such provision or written consent shall void the attempted assignment, delegation or transfer and shall be of no effect as to the Services or this Agreement.

All subcontracts, all approvals of Subcontractors and any assignment to which the SSAC consents are, regardless of their form, deemed conditioned upon performance by the Subcontractor or assignee in accordance with the terms and conditions of this Agreement.

If the Contractor subcontracts for security services, the Subcontractor shall be a Security Firm certified by the State of Illinois and the Security Firm's employees shall be licensed by the State of Illinois. The Contractor, upon entering into any subcontract with a Security Firm, shall furnish the SSAC and the Department with a copy of the subcontract for their approval. The City expressly reserves the right to approve all Security Firm subcontracts.

### **3.09 License, Permits and Safety Considerations**

#### **A. Licenses and Permits**

If the Contractor engages in Construction, it is responsible for and, in a timely manner consistent with its obligations hereunder, shall secure and maintain at its expense such permits, licenses, authorizations and approvals as are necessary for it to engage Construction under this Agreement.

#### **B. Safety Considerations**

If the Contractor engages in Construction, it shall at all times exercise reasonable care, shall comply with all applicable provisions of federal, state and local laws to prevent accidents or injuries, and shall take all appropriate precautions to avoid damage to and loss of City property and the property of third parties in connection with the Construction. The Contractor shall erect and properly maintain at all times all necessary safeguards, barriers, flags and lights for the protection of its and its Subcontractors' employees, City employees and the public.

If the Contractor engages in Construction, it shall report to the Department any damage on, about, under or adjacent to City property or the property of third persons resulting from its performance under this Agreement. The Contractor is responsible for any damage to City property and the property of third parties due, in whole or in part, to the Contractor's Construction activities under this Agreement, and the Contractor shall repair such damage to a reasonably acceptable standard.

### **3.10 Performance Bond**

If the Contractor engages in Construction work where expenditures exceed \$100,000, it shall, not later than the date the Contractor begins such work or executes a subcontract for such work, provide or cause to be provided to the Department a performance and payment bond in the amount allocated for the Construction work (but not including the amount allocated for design and preparation of specifications), by a surety or sureties acceptable to the City. The performance bond shall be in the form and to the effect of Exhibit 6 hereto, which is incorporated by reference as if fully set forth here.

If any of the sureties on such bond at any time fail financially, or are deemed to be insufficient security for the penalty of the bond, then the City may, on giving 10 days' notice thereof in writing, require the Contractor to furnish a new and additional bond with sureties satisfactory to the City, and, if so required, Contractor must promptly provide such bond.

### **ARTICLE 4 TERM OF SERVICES**

This Agreement shall take effect as of January 1, 2020 ("Effective Date") and shall continue through December 31, 2020, or until the Agreement is terminated earlier in accordance with its terms.

### **ARTICLE 5 COMPENSATION**

#### **5.01 Basis of Payment**

The maximum compensation that the Contractor may be paid under this Agreement between January 1, 2020 and December 31, 2020 is the sum of (a) the amount set forth in the Agreement-Specific Information above or the total amount of Service Tax Funds actually collected, plus interest earned on those funds, for tax year 2019, whichever is less; (b) the total amount of Surplus Funds in the amount set forth in the Agreement-Specific Information above which are being carried over from previous program years and which contractor hereby acknowledges are in its possession; (c) Surplus TIF Funds in the amount set forth in the Agreement-Specific Information above; and (d) Late Collections in an amount not to exceed the amount set forth in the Agreement-Specific Information above; the maximum compensation that the Contractor may be paid under this Agreement between January 1, 2020 and December 31, 2020, therefore, shall not exceed the amount set forth in the Agreement-Specific Information above.

## **5.02 Budget for Services**

The Contractor in conjunction with the SSAC has prepared a Budget through December 31, 2020, attached hereto as Exhibit 1 and incorporated by reference as if fully set forth here, covering all services described in the Scope of Services. Subject to the restriction that the maximum amount that may be spent in calendar year 2020 may not exceed the amount set forth in the Agreement-Specific Information above, the SSAC reserves the right to transfer funds between line items or make Budget revisions that do not affect the maximum compensation set forth in Section 5.01. The SSAC shall revise the Budget if any part of the Contractor's Services is terminated.

## **5.03 Method of Payment**

Pursuant to a schedule to be determined by the Commissioner, after the performance of Services pursuant to the terms of this Agreement, Contractor may submit invoices to the City to request reimbursement for such expenses. The Contractor must provide, along with the invoices, such additional documentation as the Commissioner requests to substantiate the Services. Upon the Commissioner's determination that the invoices are accurate, the City will process payment of the invoices.

The Contractor shall establish a separate checking account ("Account") in a bank authorized to do business in the State of Illinois that is insured by the Federal Deposit Insurance Corporation. All Service Tax Funds that the Comptroller transfers to the Contractor shall be deposited in the Account and disbursements from the Account shall be pursuant to this Agreement. THE CONTRACTOR IS RESPONSIBLE FOR RECONCILING THE ACCOUNT MONTHLY AND ACCOUNTING FOR ALL SERVICE TAX FUNDS. THE CONTRACTOR MUST REQUIRE ITS AUDITOR TO REPORT ON THE ACTIVITIES THAT ARE SUPPORTED BY THESE FUNDS IN A SEPARATE AUDIT TO ACCOUNT FOR CURRENT AND PRIOR YEARS' SERVICE TAX FUNDS.

The Contractor shall provide to the SSAC the signature card and sample check from the bank which shows the signature(s) of the Contractor's authorized representative(s). The SSAC reserves the right to audit the account and require the Contractor to refund any funds that were not spent pursuant to the Budget or that were not approved by the SSAC. The name and address of the bank is set forth in the Agreement-Specific Information above and the wire transfer and the Account numbers are set forth in the Agreement-Specific Information above.

All funds remaining in the Account at the expiration or early termination of this Agreement, including any interest earned, belong to the City for the benefit of the Area and shall be returned to the City to be used only for Special Services.





#### **5.04 Criteria for Payment**

The SSAC shall determine the reasonableness, allocability and allowability of any rates, costs and expenses charged or incurred by the Contractor.

#### **5.05 Funding**

Payments under this Agreement shall be made from Service Tax Funds in the fund number set forth in the Agreement-Specific Information above and are subject to the availability of funds therein.

#### **5.06 Non-Appropriation**

In the event that no funds or insufficient funds are appropriated and budgeted in any City fiscal period for payments to be made under this Agreement, then the City will notify the Contractor of such occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to the Contractor under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments hereunder.

### **ARTICLE 6 SPECIAL CONDITIONS**

#### **6.01 Warranties and Representations**

In connection with the execution of this Agreement, the Contractor warrants and represents:

A. That it is financially solvent; that it and each of its employees, agents, and Subcontractors are competent to perform the Services required; that it is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated herein.

B. That it shall not knowingly use the services of any ineligible Subcontractor for any purpose in the performance of the Services.

C. That it and its Subcontractors are not in default at the time of the execution of this Agreement, or deemed by the Department to have, within five years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City.

D. That it and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of § 2-92-320 of the Municipal Code of Chicago, 720 ILCS 5/33E-1 et seq. of the Criminal Code of 1961, and 65 ILCS 5/11-42.1-1 of the Illinois Municipal Code.

E. That it, all Subcontractors and their respective officers, directors, agents, partners, and employees shall cooperate with the Inspector General or Board of Ethics in any investigation or hearing undertaken pursuant to Chapters 2-56 or 2-156 of the Municipal Code of Chicago; that it understands and will abide by all provisions of Chapter 2-56 and 2-156 of the Municipal Code of Chicago and all subcontracts shall inform Subcontractors of such provision and require understanding and compliance therewith.

F. That, except only for those representations, statements or promises expressly contained in this Agreement and any exhibits attached hereto, no representation, statement or promise, oral or written, or of any kind whatsoever, by the City, its officials, agents or employees, has induced the Contractor to enter into this Agreement.

G. That the Contractor understands and agrees 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 for default.

H. That neither Contractor nor an Affiliate of Contractor (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 of Contractor" means a person or entity that 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.

I. Contractor will abide by any policies promulgated by the Department or other City departments.

J. Contractor understands and will abide by the terms of Section 2-154-020 of the Municipal Code of Chicago. Failure by the Contractor or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be a default for which no cure is available and grounds for termination of this Agreement.

## **6.02 Economic Disclosure Statement**

The Contractor has provided the City with an Economic Disclosure Statement (EDS) and Affidavit, "Familial Relationships with Elected City Officials and Department Heads," which is attached hereto as Exhibit 2 and incorporated by reference as if fully set forth herein. Contractor shall apprise the Department promptly of any changes in the information provided in the EDS by completing and submitting a revised EDS.

In addition, the Contractor shall provide the City with copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable, and evidence of its authority to do business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Office of the Secretary of State of Illinois.

## **6.03 Conflict of Interest**

Pursuant to Chapter 2-156 of the Municipal Code of Chicago, and 65 ILCS 5/3.1-55-10, no member of the governing body of the City or other unit of government, no other officer, employee, SSAC member, 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 or any related subcontract pertain, and no relative of any SSAC member shall have any personal economic or financial interest, directly or indirectly, in this Agreement or any such subcontract except to the extent that such benefits are provided equally to all residents and/or business owners in the Area. Furthermore, no SSAC member, relative of any SSAC member, City official, agent or employee shall be a Subcontractor or have any financial interest in any Subcontractor, employee or shareholder of the Contractor or receive anything of value from the Contractor.

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 shall be admitted to any share or part of this Agreement or to any financial benefit to arise from it. The Contractor acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 shall be voidable by the City.

The Contractor covenants that it, its officers, directors and employees, and the officers, directors and employees of each of its members if a joint venture, and Subcontractors presently have no financial interest and shall acquire no interest, direct or indirect, in the Services undertaken by the Contractor pursuant to the Agreement that would conflict in any manner or degree with the performance of the Services. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed. The Contractor agrees that if the Commissioner in his reasonable judgment determines that any of the Contractor's services for others conflict with the Services the Contractor is to provide for the City

under this Agreement, the Contractor shall terminate such other services immediately upon request of the City.

#### **6.04 Non-liability of Public Officials**

No official, employee or agent of the City shall be charged personally by the Contractor, or by any assignee or Subcontractor of the Contractor, with any liability or expenses of defense or be held personally liable to them under any term or provision hereof, because of the City's execution or attempted execution hereof, or because of any breach hereof.

#### **6.05 Independent Contractor**

(a) The Contractor shall perform under this Agreement as an independent contractor to the City and not as a representative, employee, agent or partner of the City.

(b) (i) The City is subject to the June 16, 2014 the "City of Chicago Hiring Plan" (the "2014 City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Agreement are employees or subcontractors of Contractor, 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 Contractor.

(iii) Contractor 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, 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 Contractor by a City employee or City official in violation of Section (ii) above, or advocating a violation of Section (iii) above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement. Contractor will also cooperate with any inquiries by OIG Hiring Oversight related to the contract.

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

#### **6.06 Business Relationships with Elected Officials**

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

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

#### **6.07 Wages**

Contractor must pay the highest of (1) minimum wage as described in 6.07(a) below; (2) "Living Wage" rate specified by MCC Sect. 2-92-610; (3) Chicago Minimum Wage rate specified by MCC Chapter 1-24, or (4) the highest applicable State or Federal minimum wage.

##### **(a) Minimum Wage, based on Mayoral Executive Order 2014-1**

Mayoral Executive Order 2014-1 provides for a fair and adequate Minimum Wage to be paid to employees of City contractors and subcontractors performing work on City contracts. A copy of the Order may be downloaded from the Chicago City Clerk's website at: [http://chicityclerk.s3.amazonaws.com/s3fs-public/document\\_uploads/executive-order/2014/Executive-Order-No-2014-1.pdf](http://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/executive-order/2014/Executive-Order-No-2014-1.pdf)

Executive Order 2014-1 by its terms does not apply to this Agreement because this Agreement is not awarded under Section 2-92 of the Municipal Code. However, for policy reasons, the Commissioner has elected to apply the Executive Order Minimum Wage to this Agreement subject to the additional exceptions in the last paragraph of this provision.

If this Agreement was advertised on or after October 1, 2014, Contractor must comply with Mayoral Executive Order 2014-1 and any applicable rules issued by the CPO. As of July 1, 2019, the Minimum Wage to be paid pursuant to the Order is \$14.10 per hour. The Minimum Wage must be paid to:

- All employees regularly performing work on City property or at a City jobsite.
- All employees whose regular work entails performing a service for the City under a City contract.

Beginning on July 1, 2015, and every July 1 thereafter, the hourly wage specified by the Executive Order shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor. Any hourly wage increase shall be rounded up to the nearest multiple of \$0.05. Such increase shall remain in effect until any subsequent adjustment is made.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of contractors' operations, does not directly relate to the services provided to the City under the contract, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on City property or at a City jobsite.

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

Additionally, the Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by Mayoral Executive Order 2014-1, if that collective bargaining agreement was in force prior to October 1, 2014 or if that collective bargaining agreement clearly and specifically waives the requirements of the order.

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

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

Mayoral Executive Order 2014-1, by its own terms, does not apply if the contractor who has entered into the contract with the City is a not-for-profit organization, defined in the Executive Order as having tax exempt status under 501(c)(3) of the U.S. Internal Revenue Code and recognized under Illinois law governing not-for-profit corporations. The Commissioner has expanded this exception for this Agreement as described below:

The Executive Order Minimum Wage is not required to be paid by any Subcontractor if such Subcontractor is 501(c)(3) not-for-profit organization, or is wholly owned by a 501(c)(3) not-for profit organization, or, if the Subcontractor is a limited liability corporation, has as its sole member a 501(c)(3) not-for-profit organization.

**(b) Chicago "Living Wage" Ordinance**

(i) Section 2-92-610 of the Municipal Code 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:

(A) If Contractor has 25 or more full-time employees, and

(B) If at any time during the performance of this Agreement, Contractor and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then

(C) Contractor must pay its Covered Employees, and must ensure 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.



(ii) Contractor's obligation to pay, and to ensure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (i)(A) and (i)(B) above are met, and will continue until the end of the term of this Agreement

(iii) As of July 1, 2019, the Base Wage is \$12.88 per hour. The current rate can be found on the Department of Procurement Services' website.

**Note: As of July 1, 2018, the wage specified by Mayoral Executive Order 2014-1 is higher than the Base Wage rate. Therefore, the higher wage specified by the Executive Order (or other applicable rule or law) must be paid.**

Each July 1 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. The currently applicable Base Wage is available from the Department of Procurement Services. At all times during the term of this Agreement, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Contractor and all other Performing Parties must pay the prevailing wage rates.

(iv) Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Contractor agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Contractor or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Contractor 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.

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

**(c) Chicago Paid Sick Leave Ordinance**

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



## **6.08 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.

## **6.09 Environmental Warranties and Representations**

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

This section does not limit 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 Agreement.

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

## **6.10 EDS / Certification Regarding Suspension and Debarment**

Contractor certifies, as further evidenced in the EDS attached as Exhibit 2, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If Contractor or any lower tier participant is unable to certify to this statement, it must attach an explanation to the Agreement.

## **6.11 Ethics**

(a) In addition to other warranties and representations, Contractor warrants:

(i) no officer, agent or employee of the City is employed by Contractor 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 Chapter 2-156 of the Municipal Code .

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to Contractor or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

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

## **6.12 MacBride Ordinance**

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if Contractor conducts any business operations in Northern Ireland, the Contractor must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section 6.12 do not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

### **6.13 Duty to Report Corrupt or Unlawful Activity**

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

### **6.14 Policy Prohibiting Sexual Harassment (Section 2-92-612 of the Chicago Municipal Code)**

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

"Contract" means any contract, purchase order, construction project, or other agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement) awarded by the city and whose cost is to be paid from funds belonging to or administered by the city.

"Contractor" means the person to whom a contract is awarded.

"Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (ii) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (iii) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

"Subcontractor" means any person that enters into a contract with a contractor to perform work on a contract.

Contractor shall, as prescribed by the Chief Procurement Officer, attest by affidavit that Contractor has a written policy prohibiting sexual harassment that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual

harassment; and (iii) the legal recourse available for victims of sexual harassment. Contractor's affidavit is attached hereto in the Exhibit titled "Sexual Harassment Policy Affidavit".

Contractor's failure to have a written policy prohibiting sexual harassment as provided above shall constitute an event of default. In the event of default, the Chief Procurement Officer shall notify Contractor of such noncompliance and may, as appropriate: (i) issue Contractor an opportunity to cure consistent with the default provisions in this Agreement; (ii) terminate the contract; or (iii) take any other action consistent with the default provisions in the contract. This section shall not be construed to prohibit the City from prosecuting any person who knowingly makes a false statement of material fact to the city pursuant to Chapter 1-21 of this Code, or from availing itself of any other remedies under contract or law.

#### **6.15 Policy on Disclosure of Salary History (Section 2-92-385 of the Chicago Municipal Code)**

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

"Contract" means any Agreement or transaction pursuant to which a contractor (i) receives City funds in consideration for services, work or goods provided or rendered, including contracts for legal or other professional services, or (ii) pays the City money in consideration for a license, grant or concession allowing it to conduct a business on City premises, and includes any contracts not awarded or processed by the Department of Procurement Services.

"Contractor" means the person to whom a contract is awarded.

As a condition of contract award, Contractor shall, as prescribed by the Chief Procurement Officer, attest by affidavit that Contractor has a policy that conforms to the following requirements:

(1) Contractor shall not screen job applicants based on their wage or salary history, including by requiring that an applicant's prior wages, including benefits or other compensation, satisfy minimum or maximum criteria; or by requesting or requiring an applicant to disclose prior wages or salary, either (i) as a condition of being interviewed, (ii) as a condition of continuing to be considered for an offer of employment, (iii) as a condition of an offer of employment or an offer of compensation, or (iv) as a condition of employment; and

(2) Contractor shall not seek an applicant's wage or salary history, including benefits or other compensation, from any current or former employer.

Contractor's affidavit is included in Appendix C to Contractor's Economic Disclosure Statement. If Contractor violates the above requirements, Contractor may be deemed ineligible to contract with the City; any contract, extension, or renewal thereof awarded in violation of the above requirements may be voidable at the option of the City. Provided, however, that upon a

finding of a violation by Contractor, no contract shall be voided, terminated, or revoked without consideration by the Chief Procurement Officer of such action's impact on the Contractor's MBE or WBE subcontractors.

## **ARTICLE 7 EVENTS OF DEFAULT, REMEDIES, TERMINATION, RIGHT**

### **7.01 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 Contractor to the City.

B. Contractor's material failure to perform any of its obligations under the Agreement including, but not limited to, the following:

(1) failure to commence or ensure timely completion of the Services due to a reason or circumstance within Contractor's reasonable control;

(2) failure to perform the Services in a manner satisfactory to the City;

(3) failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;

(4) discontinuance of the Services for reasons within the Contractor's reasonable control;

(5) failure to comply with a material term of this Agreement, including but not limited to the provisions concerning insurance and nondiscrimination; and

(6) any other acts specifically and expressly stated in this Agreement as constituting an event of default.

C. The Contractor's default under any other agreement it may presently have or may enter into with the City during the life of this Agreement. The Contractor 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.

### **7.02 Remedies**

The occurrence of any event of default which the Contractor fails to cure within 14 calendar days after receipt of notice specifying such default or which, if such event of default cannot reasonably be cured within 14 calendar days after notice, the Contractor fails, in the sole

opinion of the Commissioner, to commence and continue diligent efforts to cure, permits the City to declare the Contractor in default. Whether to declare the Contractor in default is within the sole discretion of the Commissioner. Written notification of the default, and any intention of the City to terminate the Agreement, shall be provided to Contractor and such decision is final and effective upon Contractor's receipt of such notice. Upon receipt of such notice, the Contractor 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 of completion, to the City. At such time the City may invoke any legal or equitable remedy available to it including, but not limited to, the following:

A. The right to take over and complete the Services or any part thereof as agent for and at the cost of the Contractor, either directly or through others. The Contractor shall have, in such event, the right to offset from such cost the amount it would have cost the City under the terms and conditions herein had the Contractor completed the Services.

B. 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.

C. The right of specific performance, an injunction or any other appropriate equitable remedy.

D. The right to money damages.

E. The right to withhold all or any part of Contractor's compensation hereunder.

F. The right to deem Contractor non-responsible in future contracts to be awarded by the City.

If the City considers it to be in its best interest, it 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 the Contractor to continue to provide the Services despite one or more events of default, the Contractor 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. No delay or omission to exercise any right accruing upon any event of default impairs any such right nor shall it be construed as a waiver of any event of default or acquiescence therein, and every such right may be exercised from time to time and as often as may be deemed expedient.

### **7.03 Right to Offset**

The City reserves its rights under § 2-92-380 of the Municipal Code of Chicago and the Commissioner shall consult with the SSAC before exercising such rights.



#### **7.04 Suspension**

The City may at any time request that the Contractor suspend its Services, or any part thereof, by giving 15 days prior written notice to the Contractor or upon no notice in the event of emergency. No costs incurred after the effective date of such suspension shall be allowed. The Contractor shall promptly resume its performance upon written notice by the Department. The Budget may be revised pursuant to Section 5.02 to account for any additional costs or expenses actually incurred by the Contractor as a result of recommencing the Services.

#### **7.05 No Damages for Delay**

The Contractor agrees that it, its members, if a partnership or joint venture and its Subcontractors shall make no claims against the City for damages, charges, additional costs or hourly fees for costs incurred by reason of delays or hindrances by the City in the performance of its obligations under this Agreement.

#### **7.06 Early Termination**

In addition to termination for default, the City may, at any time, elect to terminate this Agreement or any portion of the Services to be performed under it at the sole discretion of the Commissioner by a written notice to the Contractor. If the City elects to terminate the Agreement in full, all Services shall cease and all materials accumulated in performing this Agreement, whether completed or in the process of completion, shall be delivered to the Department within 10 days after receipt of the notice or by the date stated in the notice.

During the final ten days or other time period stated in the notice, the Contractor shall 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 shall be on the same basis as set forth in Article 5 hereof, but if any compensation is described or provided for on the basis of a period longer than ten days, then the compensation shall be prorated accordingly.

If a court of competent jurisdiction determines that the City's election to terminate this Agreement for default has been wrongful, then such termination shall be deemed to be an early termination.

### **ARTICLE 8 GENERAL CONDITIONS**

#### **8.01 Entire Agreement**

This Agreement, and the exhibits attached hereto and incorporated hereby, shall constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement

that are not expressly addressed herein. Any special conditions of or to this Agreement are set forth in the Agreement-Specific Information above.

### **8.02 Counterparts**

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

### **8.03 Amendments**

No changes, amendments, modifications or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of the Contractor and the Commissioner, or their successors and assigns. The City shall incur no liability for revised services without a written amendment to this Agreement pursuant to this Section.

### **8.04 Compliance with All Laws**

The Contractor shall at all times observe and comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, now existing or hereinafter in effect, which may in any manner affect the performance of this Agreement.

### **8.05 Compliance with ADA and Other Accessibility Laws**

If this Agreement involves services to the public, the Contractor warrants that all Services provided hereunder shall comply with all accessibility standards for persons with disabilities or environmentally limited persons including, but not limited to the following: Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. and the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94. In the event that the above cited standards are inconsistent, the Contractor shall comply with the standard providing greater accessibility.

If this Agreement involves design for construction and/or Construction, the Contractor warrants that all design documents produced and/or used under this Agreement shall comply with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities or environmentally limited persons including, but not limited to, the following: 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; the Architectural Barriers Act, P.L. 90-480 and the Uniform Federal Accessibility Standards; and the Environmental Barriers Act, 410 ILCS 25/1 et seq., and the regulations promulgated thereto at Ill. Admin. Code tit. 71, ch. 1, § 400.110. In the event that the above cited standards are inconsistent, the Contractor shall comply with the standard providing greater accessibility. If the Contractor fails to comply with the foregoing standards, it shall perform again at no expense all services required to be reperformed as a direct or indirect result of such failure.

### **8.06 Assigns**

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

### **8.07 Cooperation**

The Contractor agrees at all times to cooperate fully with the City and to act in the City's best interests. Upon the termination or expiration of this Agreement, the Contractor shall make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its operations in connection with the Services, uninterrupted provision of Services during any transition period and shall otherwise comply with reasonable requests of the Department in connection with this Agreement's termination or expiration.

### **8.08 Severability**

If any provision of this Agreement is held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering such provision inoperative or unenforceable in any other case or circumstances, or of rendering any other provision herein invalid, inoperative, or unenforceable to any extent. The invalidity of any one or more phrases, sentences, clauses or sections herein shall not affect the remaining portions of this Agreement or any part thereof.

### **8.09 Interpretation**

All headings in this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of gender are deemed to include correlative words of the other gender. Words importing the singular number include the plural number and vice versa, unless the context otherwise indicates. All references to exhibits or documents are deemed to include all supplements and/or amendments to such exhibits or documents if entered into in accordance with the terms and conditions hereof and thereof. All references to persons or entities are deemed to include any persons or entities succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions herein.

### **8.10 Miscellaneous Provisions**

Whenever under this Agreement the City by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to the Contractor's performance, the waiver, whether express or implied, applies only to that particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No

waiver shall be construed as a modification of the Agreement regardless of the number of times the City may have waived the performance, requirement or condition.

### **8.11 Disputes**

Except as otherwise provided in this Agreement, Contractor must and the City may bring any dispute arising under this Agreement which is not resolved by the parties to the Chief Procurement Officer for decision based upon the 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, Chicago, Illinois 60602.) The Chief Procurement Officer will issue a written decision and send it to the Contractor and the SSAC by mail. The decision of the Chief Procurement Officer is final and binding. The sole and exclusive remedy to challenge the decision of the Chief Procurement Officer is judicial review by means of a common law writ of certiorari.

### **8.12 Contractor Affidavit**

The Contractor must provide to the City, no later than thirty days after the end of each year May 1<sup>st</sup> of each year, a fully executed and notarized Affidavit certifying the expenditures and Services provided for the prior year. The Contractor must also provide to the City, no later than June 1<sup>st</sup> of each year, a Full-Year Assessment. The forms of this Affidavit and Full-Year Assessment are attached as Exhibit 7 and incorporated by reference.

### **8.13 Prohibition on Certain Contributions**

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor approached the City, as applicable,

regarding the formulation of this Contract, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

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

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

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

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

For purposes of this provision:

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

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

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

#### **8.14 Firms Owned or Operated by Individuals 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.



If to Contractor: at the address set forth in the Agreement-Specific Information above

Changes in the above-referenced addresses must be in writing and delivered in accordance with the provisions of this Section. Notices delivered by mail shall be deemed received 3 days after mailing in accordance with this Section. Notices delivered personally shall be deemed effective upon receipt.

#### **ARTICLE 10 CITY ACTION**

In the event that there is no duly constituted SSAC during the term of this Agreement, the City will retain all of the rights and obligations afforded to the SSAC hereunder.

#### **ARTICLE 11 MULTI-PROJECT LABOR AGREEMENT**

The City has entered into the Multi-Project Labor Agreement (“PLA”) with various trades regarding projects as described in the PLA, a copy of which, without appendices, is attached hereto as Exhibit 9. A copy of the PLA, with appendices, may also be found on the City's website at <http://www.cityofchicago.org/PLA>. Contractor acknowledges familiarity with the requirements of the PLA and its applicability to any Services under this Agreement, and shall comply in all respects with any applicable provisions of the PLA.

**Exhibit 3**  
**Contractor Insurance Requirements**

**Department of Planning & Development**  
**Special Service Areas**

**A. Insurance Required**

Contractor must provide and maintain at Contractor's own expense, during the term of the Agreement and during the time period following expiration if Contractor is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

1) Workers Compensation and Employers Liability (Primary and Umbrella)

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident; \$500,000 disease-policy limit; and \$500,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Contractor may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Contractor's work, services or operations and completed operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Contractor's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Contractor may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)



When any motor vehicles (owned, non-owned and hired) are used in connection with Services to be performed, the Contractor must maintain Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence limit, for bodily injury and property damage. The City is to be added as an additional insureds on a primary, non-contributory basis.

Contractor may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Professional Liability

When any professional consultants (e.g. CPA's Attorney, Architects, Engineers) perform work, services, or operations in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$500,000. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

5) Crime

The Contractor is responsible for all persons handling funds under this Agreement against loss by dishonesty, robbery, theft, destruction or disappearance, computer fraud, credit card forgery and other related crime risks.

## **B. Security Firms**

If the Contractor enters into a subcontract with a Security Firm, such Security Firm must be certified by the State of Illinois and the Security Firm's employees must be registered and certified by the State. Contractor must ensure and require any Security Firm subcontractor to comply with the Risk Management Division approved Security Firm Insurance Provision set forth in Exhibit 4 of this Agreement, attached hereto and incorporated by references as though fully set forth herein.

## **C. Additional Requirements**

Evidence of Insurance. Contractor must furnish the City, Chicago Department of Planning and Development (DPD), City Hall Room 1000, 121 North LaSalle Street 60602, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Contractor must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Contractor, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Contractor must advise all insurers of the Agreement

provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Contractor for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Contractor to comply with required coverage and terms and conditions outlined herein will not limit Contractor's liability or responsibility nor does it relieve Contractor of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Contractor must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

Waiver of Subrogation. Contractor hereby waives its rights and its insurer(s)' rights of and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance herein for any loss arising from or relating to this Agreement. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Contractor's insurer(s).

Contractor's Insurance Primary. All insurance required of Contractor under this Agreement shall be endorsed to state that Contractor's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Contractor's Liabilities. The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Contractor under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Contractor maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and shall be entitled the higher limits and/or broader coverage maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Joint Venture or Limited Liability Company. If Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Contractor. If Contractor desires additional coverages, the Contractor will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Contractor shall name the Subcontractor(s) as a named insured(s) under Contractor's insurance or Contractor will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability or Professional Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Contractor. Contractor shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Contractor is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Contractor is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Contractor must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Contractor's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/03/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Martin Insurance Team LTD 9825 S Pulaski Rd  Evergreen Park IL 60805		<b>CONTACT NAME:</b> Gina Gallagher <b>PHONE (A/C, No, Ext):</b> 7083304402 <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> gina@martininsurance.com	
<b>INSURED</b> 51st Street Business Assoc 220 E 51st St  Chicago IL 60615		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> TWIN CITY FIRE INS CO CO <b>NAIC #</b> 29459 <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	INDS	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	UNITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X		83SBAIX8599	08/16/2019	08/16/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$      RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	83WECBF5423	07/5/2019	07/05/2020	<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CITY OF CHICAGO AS ADDITIONAL INSURED ON GENERAL LIABILITY POLICY

**CERTIFICATE HOLDER****CANCELLATION**

CITY OF CHICAGO; COMPTROLLER'S OFFICE  
 FEDERAL FUNDS INSURANCE UNIT

ATTN: MARIA SANTIAGO  
 121 N LASALLE, ROOM 700  
 CHICAGO IL 60602

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Gina Gallagher

© 1988-2015 ACORD CORPORATION. All rights reserved.

52

**Exhibit 4**  
**Security Firm Insurance Requirements**

**Department of Planning & Development**  
**Special Service Areas**

**A. Insurance Required**

Security Firm must provide and maintain at Security Firm's own expense, until Contract completion and during the time period following expiration if Security Firm is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Contract.

- 1) Workers Compensation and Employers Liability (Primary and Umbrella)  
Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Security Firm may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 2) Commercial General Liability (Primary and Umbrella)  
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, extended bodily injury, assault and battery when using physical force to protect persons or property, false or wrongful arrest, detention or imprisonment, medical payments, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City of Chicago and Contractor must be provided additional insured status with respect to liability arising out of Security Firm's work, services or operations and completed operations performed on behalf of the City and Contractor. The Contractor and the City's additional insured status must apply to liability and defense of suits arising out of Security Firm's acts or omissions, whether such liability is attributable to the Security Firm or to the City and Contractor on an additional insured endorsement form acceptable to the City and Contractor. The full policy limits and scope of protection also will apply to the City and Contractor as an additional insured, even if they exceed the City's and Contractor's minimum limits required herein. Security Firm's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City and Contractor.

Security Firm may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Services to be performed, the Security Firm must maintain Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence limit, for bodily injury and property damage. The City and Contractor are to be added as additional insureds on a primary, non-contributory basis.

Security Firm may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City and Contractor.

Security Firm may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Professional Liability

When any Security Officers or other security professionals perform work, services, or operations in connection with the Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability for liability of others including the SSA and the City of Chicago assumed under any written contract or agreement for breach of professional services or duty caused by or on behalf of the Security Firm. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

**B. Additional Requirements**

Evidence of Insurance. Security Firm must furnish the Contractor and the City of Chicago Department of Planning and Development (DPD), City Hall Room 1000, 121 North LaSalle Street 60602, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Contract, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or

renewal date occurring during the term of this Contract. Security Firm must submit evidence of insurance prior to execution of Contract. The receipt of any certificate does not constitute agreement by the Contractor that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Contract. The failure of the Contractor to obtain, nor the Contractor's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Security Firm, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the Contractor of any of the required insurance provisions. Security Firm must advise all insurers of the Contract provisions regarding insurance. The Contractor in no way warrants that the insurance required herein is sufficient to protect Security Firm for liabilities which may arise from or relate to the Contract. The Contractor reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Security Firm to comply with required coverage and terms and conditions outlined herein will not limit Security Firm's liability or responsibility nor does it relieve Security Firm of the obligation to provide insurance as specified in this Contract. Nonfulfillment of the insurance conditions may constitute a violation of the Contract, and the Contractor retains the right to suspend this Contract until proper evidence of insurance is provided, or the Contract may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Security Firm must provide for sixty (60) days prior written notice to be given to the Contractor in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Security Firm.

Waiver of Subrogation. Security Firm hereby waives its rights and its insurer(s)' rights of and agrees to require their insurers to waive their rights of subrogation against the Contractor and the City of Chicago under all required insurance herein for any loss arising from or relating to this Contract. Security Firm agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Contractor or the City of Chicago received a waiver of subrogation endorsement for Security Firm's insurer(s).

Contractor's Insurance Primary. All insurance required of Security Firm under this Contract shall be endorsed to state that Security Firm's insurance policy is primary and not contributory with any insurance carrier by the Contractor or the City of Chicago.

No Limitation as to Security Firm's Liabilities. The coverages and limits furnished by Security Firm in no way limit the Security Firm's liabilities and responsibilities specified within the Contract or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the Contractor and the City of Chicago do not contribute with insurance provided by Security Firm under this Contract.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

Insurance and Limits Maintained. If Security Firm maintains higher limits and/or broader coverage than the minimums shown herein, the Contractor and the City of Chicago requires and shall be entitled the higher limits and/or broader coverage maintained by Security Firm. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Contractor and the City of Chicago.

Joint Venture or Limited Liability Company. If Security Firm is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Security Firm. If Security Firm desires additional coverages, the Security Firm will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Security Firm shall name Subcontractor(s) as a named insured(s) under Security Firm's insurance or Security Firm will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Security Firm. Security Firm shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Security Firm is responsible for ensuring that each Subcontractor has named the Contractor and the City of Chicago as additional insureds where required on an additional insured endorsement form acceptable to the Contractor and to the City of Chicago. Security Firm is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the Contractor or the City of Chicago, Security Firm must provide to the Contractor and the City of Chicago certificates of insurance and additional insured endorsements or other evidence of insurance. The Contractor and the City of Chicago reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Security Firm's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Contract to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.



EXHIBIT 5

**Prevailing Wages**

Prevailing wage rates for this Agreement are posted at the following link:  
<https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/2019-Rates.aspx>

EXHIBIT 6

**Performance Bond Form**

Per Section 3.10, this applies to construction contracts only.

EXHIBIT 7

**Contractor Affidavit**

Contractor Name:  
Special Service Area Number:  
Agreement ("Agreement"):

Agreement between the City of Chicago and \_\_\_\_\_ dated \_\_\_\_\_,  
relating to the provision of special services.

**AFFIDAVIT**

The undersigned, \_\_\_\_\_, as \_\_\_\_\_, and on behalf of \_\_\_\_\_, having been duly sworn under oath, certifies that in the year \_\_\_\_\_, it performed that portion of the Services described in Exhibit 1 of the Agreement in accordance with the terms of the Agreement, to the extent described in the attached Full-Year Assessment Form and that it spent that portion of funds obtained from the City in connection with that Agreement on the Services described in Exhibit 1, to the extent described in the attached Full-Year Assessment Form. The Full-Year Assessment Form shall be in the form prescribed by the City and shall contain such level of detail as the City may require from time to time.

Nothing in this Affidavit may be construed as limiting Contractor's obligations under the Agreement. All terms not defined in this Affidavit will be as defined in the Agreement.

Under penalty of perjury, I certify that I am authorized to execute this Affidavit on behalf of the Contractor, that I have personal knowledge of the certifications made in this Affidavit, and that they are true and correct.

NAME OF CONTRACTOR:

\_\_\_\_\_

Signature of Authorized Officer

\_\_\_\_\_

Name of Authorized Officer (Print or Type)

\_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

Sworn to and acknowledged before me by \_\_\_\_\_ [name of signatory] as  
[title] of \_\_\_\_\_ [name of  
contracting party] this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary

## FULL-YEAR ASSESSMENT FORM

This requirement is met by submitting the YTD report from the annual workplan budget document. This document is automatically compiled once all Quarterly Report tabs have been completed within the same document.

### Instructions

1. Print the YTD Report tab (6 pages)
2. SSA Chair signs page 6
3. Complete Contractor Affidavit Form
4. Scan all 7 pages with affidavit on top
5. Email PDF to DPD

## EXHIBIT 8

### Special Service Area - Additional Audit Requirements

#### **Accounting System**

The Department requires that the Contractor maintain its accounting system in a manner which allows the Contractor's expenditures to be categorized in its statement of activities according to the categories listed in the budget approved by the City for each Area.

#### **Guidance for the Contractor's Selection of a CPA Firm (Independent Auditor)**

The Contractor must use the following guidelines for engaging a qualified CPA Firm:

1. Issue a Request for Proposal ("RFP") that sets forth all of the terms and conditions of the engagement, evaluation criteria, and scope of the work required. Audit firm evaluations can replace an annual RFP process; an RFP process every three years is preferred.
2. Distribute and publicize the RFP sufficiently to ensure full and open competition.
3. Request in the RFP that bidders provide detail on:
  - a. How the CPA Firm will conduct the audit.
  - b. Qualifications of the CPA Firm, management, and staff, including experience in auditing like entities.
  - c. Policies on notification of changes in key personnel.
  - d. Whether the proposed staff has received continuing professional education that is relevant to the performance of this engagement during the previous 2 years, including governmental accounting and reporting standards promulgated by the Governmental Accounting Standards Board (GASB).
  - e. Request a copy of their most recent Peer Review Report and letter of comments. Whether the CPA Firm is independent, as defined by applicable professional standards.
  - f. Whether the CPA Firm has been the object of any disciplinary action during the past 3 years.
  - g. Confirmation the CPA Firm and key personnel assigned to this engagement maintains an active license in the State of Illinois and attached a copy of a current license with the RFP response or annually.
  - h. Confirmation the CPA Firm is not on the City's debarred vendor list.
  - i. The audit fee.
4. Evaluate the proposals based on:
  - a. The CPA Firm's understanding of the audit requirements, including the needs of the Area, the governmental reporting model required for the SSA financial statements, and other deliverables.

- b. Soundness of technical approach to the audit, including the meeting of the Contractor's specific deadlines and other requirements.
  - c. Qualifications of the CPA Firm.
  - d. Qualifications of the audit team.
  - e. The information provided by respondents in response to the RFP, including cost and independence.
5. Rate the proposals as follows:
- a. Proposals should be evaluated as submitted.
  - b. Make a list of strengths and weaknesses for each to support its technical rating.
  - c. Review the proposed fees offered by the bidders after completion of the technical evaluation.
  - d. Ask questions of the bidders to eliminate any ambiguities.
  - e. Select a proposal that is most advantageous to the Area based on the evaluation criteria set forth in the RFP.
6. Once a CPA Firm is chosen based upon the foregoing criteria, require a written engagement letter to avoid misunderstandings that specifies:
- a. Audit scope, objectives, and purposes.
  - b. Deadlines for the work to be performed.
  - c. Audit fees.
  - d. Report format, including providing a PDF digital version of the final audit.
  - e. Type and timing of support to be provided to the CPA Firm by the Special Service Area Commission ("SSAC").
  - f. Professional auditing standards to be followed in performing the audit.
  - g. Independence of the CPA Firm to the SSAC.
  - h. Terms of making changes to the scope of the agreement.
  - i. CPA Firm's ownership of the work papers, retention period, and requirement for availability to the City upon request.

### **Summary Schedule of Findings.**

In order to properly conduct the certified audit of the books and records of the Contractor, it is necessary for the CPA Firm to read and understand the requirements contained in the Agreement. Particular attention should be given to Sections 3 and 5 of the Agreement.

The CPA Firm must test the Contractor's compliance with the requirements contained in the Agreement. Should the CPA Firm find exception to the requirements of the Agreement, it must disclose all exceptions in a separate schedule, which shall be entitled "Summary Schedule of Findings". Each finding shall be listed separately. The schedule shall be incorporated with the other required financial statements.

If the CPA Firm finds no exceptions to the Agreement requirements, it shall still include a "Summary Schedule of Findings". On that schedule the CPA Firm shall make an affirmative statement indicating it has read the Agreement and, after conducting the audit, has determined that no exceptions were noted.

Subsections to note in Section 5 include:

- a. *Section 5.01, Basis of Payment*, describes "carry over" as the amount of Service Tax Funds collected for prior tax years which remain previously unspent.
- b. *Section 5.02, Budget for Services*, restricts the maximum amount that may be spent in a calendar year to the amount stated in the Agreement.
- c. *Section 5.03, Method of Payment*, states that the Contractor shall establish a separate checking account and that Area funds shall not be commingled with other sources.

### **Audit of Financial Statements**

As discussed in Section 3.07, "Records and Audits", the Contractor shall provide an annual audited financial statement to the Department and SSAC within 120 calendar days after the end of the calendar year and the system of accounting shall be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

### **Audit Documents**

The City requires an audit conducted in accordance with generally accepted auditing standards (GAAS) to include the following documents:

1. Statement of Financial Position and Governmental Fund Balance Sheet, comparative.
2. Statement of Activities and Governmental Fund Revenues, Expenditures and Changes in Fund Balance, comparative.
3. Schedule of Revenues and Expenditures Budget and Actual (period being audited compared to the previous year, e.g. columns should be 2020 Budget, 2020 Actual, Variance, 2019 Budget, 2019 Actual, Variance). This schedule is presented as supplementary information unaudited.
4. Notes to the Financial Statements.
5. Summary Schedule of Findings that also includes the management response to any audit findings and any subsequent CPA Firm and/or City's and/or management responses until the CPA Firm and/or the City consider the findings sufficiently remedied.

Expense descriptions included in the Statement of Activities and Governmental Fund Revenues, Expenditures and Changes in Fund Balance must correspond to the expense descriptions in the budget submitted to the City.

### **CPA Firm License**

The CPA Firm shall attach as an exhibit to the audit the firm's active license and key personnel to this engagement in the State of Illinois.

### **Audit Presentations**

The CPA Firm shall attend at least one (1) SSAC meeting and be available for other meetings as requested by the City to present the draft and/or final audit and respond to questions.

### **Debarment**

Upon issuance of the final audit, the CPA Firm shall confirm it is not on the City's debarred vendor list.



EXHIBIT 9

PLA

Multi-Project Labor Agreement (PLA) only applies to construction contracts.  
Form can be found at the link below.

1

[https://www.chicago.gov/city/en/depts/dps/provdrs/comp/svcs/multi-project\\_laboragreementplaandplassignatoryunions.html](https://www.chicago.gov/city/en/depts/dps/provdrs/comp/svcs/multi-project_laboragreementplaandplassignatoryunions.html)

EXHIBIT 10

**Sexual Harassment Policy Affidavit (Section 2-92-612)**

The policy prohibiting sexual harassment as described in Section 2-92-612 of the Municipal Code of Chicago ("MCC") is applicable to contracts paid from funds belonging to or administered by the City.

Contract title: SSA Service Provider Agreement

Specification #: \_\_\_\_\_ (DPD will fill in.)

In accordance with requirements set forth in Section 2-92-612 of the MCC, Contractor hereby attests that Contractor has a written policy prohibiting sexual harassment that includes, at a minimum, the following information:

- (i) the illegality of sexual harassment;
- (ii) the definition of sexual harassment; and
- (iii) the legal recourse available for victims of sexual harassment.

Contractor understands that it may be required to produce records to the CPO to verify the information provided.

Under penalty of perjury the person signing below: (1) warrants that he/she is authorized to execute this Affidavit on behalf of Contractor, and (2) warrants that all certifications and statements contained in this Affidavit are true, accurate, and complete as of the date of execution.

Name of Contractor: \_\_\_\_\_  
(Print or Type)

Signature of Authorized Officer: \_\_\_\_\_  
(Signature)

Title of Signatory: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn (or affirmed) to before me on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name/s of person/s making statement).

\_\_\_\_\_

(Signature of Notary Public)

(Seal)

EXHIBIT 11

Per Section 8.15, this contract has no specified MBE & WBE goals.  
This Exhibit does not need to be completed for SSA Service Provider Agreements.



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

**Fax: 312-744-3281**

**MBE & WBE SPECIAL CONDITIONS FOR COMMODITIES OR SERVICES CONTRACTS**

**SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR COMMODITIES OR SERVICES**

**Policy and Terms**

It is the policy of the City of Chicago that Local Businesses certified as Minority Owned Business Enterprises (MBE) and Women Owned 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, as well as MBEs and WBEs certified by Cook County, Illinois, will have full and fair opportunities to participate fully in the performance of this contract. Therefore, the Contractor will not discriminate against any person or business on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income and will take affirmative action to ensure that women and minority businesses will have the maximum opportunity to compete for and perform subcontracts for supplies or services.

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, 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 non-construction contracts to certified WBEs.

Accordingly, the Contractor commits to make Good Faith Efforts 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 Percentage	WBE Percentage
<u>0</u> %	<u>0</u> %

(See Form "Bidders Commitment to Utilize MBE and WBE Firms on No Stated Goals Contract" for Contract Specific Goals in the case of a contract subject to a bid preference pursuant to MCC 2-92-525.)

This commitment is met by the Contractor's status as a MBE or WBE, or by a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE or WBE participation in such joint venture), 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 any combination of the foregoing.

**Note:** MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both MBE and WBE may only be listed on a bidder's compliance plan as either an MBE or a WBE, but not both, to demonstrate compliance with the Contract Specific Goals.

The Contractor also may 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 contracts.

Pursuant to MCC 2-92-535, the prime contractor may apply be awarded an additional 0.5 percent credit, up to a maximum of a total of 5% additional credit, for every 1% of the value of a contract self-performed by MBEs or WBEs, or combination thereof, that have entered into a mentoring agreement with the contractor or subcontractor-to-subcontractor mentoring agreement. This up to 5% may be applied to the Contract Specific Goals, or it may be in addition to the Contract Specific Goals.

### **Definitions**

**"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 (defined below). 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 City of Chicago 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.*

**"Bid"** means a bid, proposal, or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification of task order request (issued in accordance with the Master Consulting Agreement) that is issued by the City.

**"Bidder"** means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

**"Broker"** means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

**"Chief Procurement Officer" or "CPO"** means the chief procurement officer of the City of Chicago or his or her designee.

**"Commercially Useful Function"** means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

**"Contract Specific Goals"** means the subcontracting goals for MBE and WBE participation established for a particular contract. In the case of a contract subject to the bid incentive set forth in MCC 2-92-525, "Contract Specific Goals" means the utilization percentage for MBEs or WBEs to which contractor committed with its bid.

**"Contractor"** means any person or business entity that has entered into a contract with the City as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.

**"Direct Participation"** means the value of payments made to MBE or WBE firms for work that is performed in their Area of Specialty directly related to the performance of the subject matter of the Contract will count as Direct Participation toward the Contract Specific Goals.

**"Directory"** means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. 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.

**"Good Faith Efforts"** means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that the CPO or his or her designee has determined, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

**"Indirect Participation"** refers to the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty related to other aspects of the Contractor's business. (Note: no dollar of such indirect MBE or WBE participation shall be considered in a Good Faith Efforts determination more than once against a contractor's MBE or WBE commitment with respect to all government contracts held by that contractor.)

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

**"Mentor-Protégé Agreement"** means an agreement between a prime and MBE or WBE subcontractor ("Mentoring Agreement") or an agreement between a prime's subcontractor and MBE or WBE subcontractor ("Subcontractor-to-Subcontractor Mentoring Agreement"), pursuant to MCC 2-92-535, that is approved by the City of Chicago and complies with all requirements of MCC 2-92-535 and any rules and regulations promulgated by the Chief Procurement Officer.

**"Minority Owned Business Enterprise" or "MBE"** means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a minority owned and controlled business by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

**"Municipal Code of Chicago" or "MCC"** means the Municipal Code of the City of Chicago.

**"Supplier" or "Distributor"** refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

**"Women Owned Business Enterprise" or "WBE"** means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a women owned business by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

#### **Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

- a. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

- i. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
  - ii. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
  - iii. Each joint venture partner executes the bid to the City; and
  - iv. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items i, ii, and iii above in this Paragraph a.
- b. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

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

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work, then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

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

c. **Schedule B: MBE/WBE Affidavit of Joint Venture**

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

- i. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
- ii. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
- iii. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
- iv. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

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

that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

### **Counting MBE/WBE Participation Toward the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm that is certified as both a MBE and a WBE may only be listed on the bidder's compliance plan under one of the categories, but not both. Except as provided in MCC 2-92-525(b)(2), only Payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.

- a. Only expenditures to firms that perform a Commercially Useful Function as defined above may count toward the Contract Specific Goals.
  - i. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  - ii. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
  - iii. Indications that a subcontractor is not performing a commercially useful function include, but are not limited to, labor shifting and equipment sharing or leasing arrangements with the prime contractor or a first tier subcontractor.
- b. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its Area of Specialty in which it is certified counts toward the Contract Specific Goals, except as provided in MCC 2-92-525(b)(2).
- c. For maintenance, installation, repairs or inspection, or professional services, if the MBE or WBE performs the work itself: 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies and materials purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or its affiliate). 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals.
- d. If the MBE or WBE is a manufacturer: 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- e. If the MBE or WBE is a distributor or supplier: 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.

- f. If the MBE or WBE is a broker:
  - i. Zero percent (0%) of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  - ii. As defined above, Brokers provide no commercially useful function.
- g. If the MBE or WBE is a member of the joint venture contractor/bidder:
  - i. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals; or
  - ii. If employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in the Schedule B.
  - iii. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs.
- h. If the MBE or WBE subcontracts out any of its work:
  - i. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  - ii. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except as allowed by (c) above).
  - iii. The fees or commissions charged for providing a bona fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - iv. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - v. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

#### **Regulations Governing Reductions to 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 determines that it is unable to meet the MBE and/or WBE Contract-Specific Goals 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'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.

A bidder will be considered responsive to the terms and conditions of these Regulations if, at the time of bid, it submits a waiver request and all supporting documentation that adequately addresses the conditions for waiver of MBE/WBE goals, including proof of notification to assist agencies except:

- Bidders 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; and
- Bidders responding 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 or her discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder; or re-advertising the bid/proposal. All bidders must submit all required documents at the time of bid opening to expedite the contract award.

#### **Direct Participation**

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

- a. The bidder 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 work identified or related to the advertised bid/proposal. Documentation must include but is not necessarily limited to:
  1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
  2. A listing of all MBE/WBE firms contacted that includes:
    - Name, address, telephone number and email of MBE/WBE firms solicited;
    - Date and time of contact;
    - Method of contact (written, telephone, transmittal of facsimile documents, email, etc.)
  3. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
    - Project identification and location;
    - Classification/commodity of work items for which quotations were sought;
    - Date, item and location for acceptance of subcontractor bid proposals;

- Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
- 
- Affirmation that Good Faith Efforts have been demonstrated by:
  - choosing subcontracting opportunities likely to achieve MBE/WBE goals; and
  - not imposing any limiting conditions which were not mandatory for all subcontractors; and
  - providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date; and
  - documented efforts or actual commitment to the indirect participation of MBE/WBE firms.

**OR**

- b. 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 subcontractor's quote is excessively costly, the bidder must provide the following information:
1. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
    - A listing of all potential subcontractors contacted for a quotation on that work item;
    - Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
  2. 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:
    - The City's estimate for the work under a specific subcontract;
    - The bidder's own estimate for the work under the subcontract;
    - An average of the bona fide prices quoted for the subcontract;
    - Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

**Assist Agency Participation in waiver/reduction requests**

Every waiver and/or reduction request must include evidence that the bidder has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community. This notice must be given at least five (5) business days in advance of the initial bid due date.

The notice requirement of this Section will be satisfied if a bidder 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 to be submitted with the bid for any bid/proposal to be deemed responsive. If deemed appropriate, the Contract Compliance Officer may contact the assist agency for verification of notification.

### **Impracticability**

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.

The requirements set forth in these Regulations (this subsection **Error! Reference source not found.** "**Error! Reference source not found.**") 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 Chief Procurement Officer, 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, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

### **Procedure to Determine Bid Compliance**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its Good Faith Efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals; and/or
- A request for reduction or waiver of the Contract Specific Goals in accordance with Section 2-92-450 of the MCC.

In the case of a bid utilizing the "Bid Incentive to Encourage MBE and WBE Utilization" pursuant to MCC 2-92-525(b)(2), failure to submit an MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goal to which the bidder has committed will not result in rejection of the bid, but the bidder may be found ineligible for the bid incentive.

Except as provided in MCC 2-92-525(b)(2), only compliance plans utilizing MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements will be counted toward the Contract Specific Goals.

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

(1) **Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant.**

The bidder must submit the appropriate Schedule C-1 with the bid for each MBE and WBE included on the Schedule D-1. Suppliers must submit the Schedule C-1 for Suppliers, first tier subcontractors must submit a Schedule C-1 for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C-1 for second tier Subcontractors. The City encourages subcontractors to utilize the electronic fillable format Schedule C-1, which is available at the Department of Procurement Services website, <http://cityofchicago/forms>. Each Schedule

C-1 must be executed by each MBE and WBE and accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C-1 has been submitted with the bid, an executed original Schedule C-1 must be submitted by the bidder for each MBE and WBE included on the Schedule D-1 within five business days after the date of the bid opening.

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.

(2) **Letters of Certification.**

A copy of each proposed MBE/WBE firm's current Letter of Certification from the City of Chicago or Cook County Illinois, must be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago and Cook County 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. Letters of Certification for firms that the City or Cook County has found ineligible or has decertified will not be accepted.

(3) **Schedule B: Affidavit of Joint Venture, and Joint Venture Agreements (if applicable).**

If the bidder's MBE/WBE proposal includes the participation of a MBE/WBE as joint venture on any tier (either as the bidder or as a subcontractor), the bidder must provide a copy of the joint venture agreement and a Schedule B along with all other requirements listed in Section Error! Reference source not found., "Error! Reference source not found." above. In order to demonstrate the MBE/WBE 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 equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE 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 and each partner's authority to expend joint venture funds (e.g., check signing authority).

(4) **Schedule D-1: Required Schedules Regarding MBE/WBE Utilization**

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm. The City encourages bidders to utilize the electronic fillable format Schedule D-1, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section Error! Reference source not found., "Error! Reference source not found." herein, the bidder must commit to the expenditure of a specific dollar amount of participation by 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, depends upon requirements agreements and blanket 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 opening, the bidder may submit a revised Schedule D-1 (executed and notarized to conform with the Schedules C-1). Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, bidders 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.

All commitments for joint venture agreements must be delineated in the Schedule B.

**(5) Application for Approval of Mentor Protégé Agreement**

Any applications for City approval of a Mentor Protégé agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

**Reporting Requirements During the Term of the Contract**

- a. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.
- b. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- c. Once the prime Contractor has reported payments made to each subcontractor, including zero dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
- d. All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.  
  
Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://chicago.mwdbe.com>
- e. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- f. The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after project closeout. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

**Changes to Compliance Plan**

**Permissible Basis for Change Required**

No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Contract Compliance Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City,

and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:

- a) Unavailability after receipt of reasonable notice to proceed;
- b) Failure of performance;
- c) Financial incapacity;
- d) Refusal by the subcontractor to honor the bid or proposal price or scope;
- e) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- f) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- g) The subcontractor's withdrawal of its bid or proposal; or
- h) De-certification of the subcontractor as a MBE or WBE (graduation from the MBE/WBE program does not constitute de-certification).
- i) Termination of a Mentor Protégé Agreement.

#### **Procedure for Requesting Approval**

If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

- a) The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
- b) The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.
- c) Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of Good Faith Efforts, must meet the requirements in section 5. If the MBE or WBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
- d) If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

- e) A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

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

### **Non-Compliance and Damages**

Without limitation, the following shall constitute a material breach of this contract and 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 demonstrate Good Faith Efforts, except in the case of a contract where a bid incentive under MCC 2-92-525 was taken into consideration in the award; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.

Payments due to the contractor may be withheld until corrective action is taken.

Pursuant to MCC 2-92-445 or 2-92-740, as applicable, remedies or sanctions may include a penalty in the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs, and disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to MCC 2-92-445 or 2-92-740, within 15 business days of the final determination.

In the case of a contract for which a bid incentive under MCC 2-92-525 was taken into consideration in the award, any contractor that has failed to retain the percentage of MBE or WBE subcontractor committed to in order for the bid incentive to be allocated will be fined an amount equal to three times the amount of the bid incentive allocated, unless the contractor can demonstrate that due to circumstances beyond the contractor's control, the contractor for good cause was unable to retain the percentage of MBE or WBE subcontractors throughout the duration of the contract period.

### **Arbitration**

- a) In the event 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 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 a MBE/WBE.

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, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrat

**Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan**

The Prime Contractor designates the following person as its MBE/WBE Liaison Officer:

\_\_\_\_\_  
(Name- Please Print or Type)

\_\_\_\_\_  
(Phone)

One or more owners or principals of the Prime Contractor ( ) does / ( ) does not have an ownership interest in any MBE or WBE listed in this Schedule D. Provide names of such individuals and their respective ownership percentages, and identify the MBE/WBE firms in which such ownership is held, or indicate "none." Add additional sheets if necessary:

\_\_\_\_\_  
\_\_\_\_\_

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, THAT NO MATERIAL FACTS HAVE BEEN OMITTED, AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.**

\_\_\_\_\_  
(Name of Prime Contractor -- Print or Type)

State of: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

County of: \_\_\_\_\_

\_\_\_\_\_  
(Name/Title of Affiant -- Print or Type)

\_\_\_\_\_  
(Date)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above signed officer \_\_\_\_\_  
(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

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

\_\_\_\_\_  
(Notary Public Signature)

SEAL:

Commission Expires: \_\_\_\_\_