CITY OF CHICAGO
DEPARTMENT OF PROCUREMENT SERVICES
ROOM 403, CITY HALL, 121 N. LA SALLE ST.

JNCP Form Rev _____

JUSTIFICATION FOR NON-COMPETITIVE PROCUREMENT

COMPLETE THIS SECTION IF NEW CONTRACT

For contract(s) in this request, answer applicable questions in each of the 4 major subject areas below in accordance with the Instructions for Preparation of Non-Competitive Procurement Form on the reverse side.
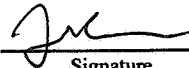
Request that negotiations be conducted only with Northrop Grumman for the product and/or services described herein.
(Name of Person or Firm)

This is a request for _____ (One-Time Contractor Requisition #_____, copy attached) or _____X_____ Term Agreement or ____Delegate Agency (Check one). If Delegate Agency, this request is for "blanket approval" of all contracts within the

_____(Attach List)   Pre-Assigned Specification No. 33478_____
(Program Name)   Pre-Assigned Contract No. _____

COMPLETE THIS SECTION IF AMENDMENT OR MODIFICATION TO CONTRACT

Describe in detail the change in terms of dollars, time period, scope of services, etc., its relationship to the original contract and the specific reasons for the change. Indicate both the original and the adjusted contract amount and/or expiration date with this change, as applicable. Attach copy of all supporting documents. Request approval for a contract amendment or modification to the following:

Contract #:_____   Company or Agency Name:_____

Specification #:_____   Contract or Program Description:_____
Mod. #:_____ (Attach List, if multiple)

Sarah Kremsner	6-9471		OEMC	2.7.05
Originator Name	Telephone	Signature	Department	Date

Indicate SEE ATTACHED in each box below if additional space needed:

(x) PROCUREMENT HISTORY Please see attached.
(x) ESTIMATED COST Please see attached. OEMC estimates approx. $4,000,000 per year.
(x) SCHEDULE REQUIREMENTS Please see attached.
(x) EXCLUSIVE OR UNIQUE CAPABILITY Please see attached.
(x) OTHER Please see attached.

APPROVED BY: _____ 2/7/05 _____ _____
DEPARTMENT HEAD   DATE   BOARD CHAIRPERSON   DATE
OR DESIGNEE

ATTACHMENT
OFFICE OF EMERGENCY MANAGEMENT AND COMMUNICATIONS
JUSTIFICATION FOR NON-COMPETITIVE PROCUREMENT
NORTHROP GRUMMAN PUBLIC SAFETY

PROCUREMENT HISTORY

Northrop Grumman Information Technology (formerly PRC Public Sector, Inc.) has been responsible for furnishing the hardware and developing certain proprietary computer software and related system integration and maintenance for the Computer Aided Dispatch (CAD) system for the City's 911 System since September 1995. The original agreement (dated April 22, 1993) was between the City and Fluor Daniel Illinois, Inc, which was aquired by PRC. The Altaris® software is at the core of the CAD System's functionality, and was proprietary to PRC. PRC has now been acquired by Northrop Grumman Information Technology, which now has proprietary rights to the Altaris® software.

The current term agreement with Northrop Grumman will expire on November 18, 2005. It is critical that OEMC enter into a new agreement, and because of the proprietary nature of the CAD software, this agreement cannot be competitively bid.

ESTIMATED COST

OEMC estimates a ceiling of $20 million over a five (5) year period. We anticipate a significant increase over the ceiling negotiated in the last contract because we plan several extensive upgrades to the CAD and related software. For example, the City plans to build a replica of the existing 911 Operations Center to mitigate the risk of a massive system failure or terrorist attack at the 1411 W. Madison facility. This backup facility will have a CAD system that replicates the existing system, and for which connecting software must be developed. The City's Operations Center continues to expand its scope by centralizing more of the City's non-emergency functions, and the CAD system will be used to coordinate these services and processes. As the City installs more cameras to prevent crime and expand homeland security, the CAD system will be integral to viewing, storing and managing this digital imagery. Northrop Grumman will be a central teammate in these and other projects, and OEMC anticipates increased use of this contract.

Within the next few months, Northrop Grumman will produce a fixed price list. The City will then negotiate this price list through the course of the regular contract negotiation process.

SCHEDULE REQUIREMENTS

OEMC requests daily changes to the CAD software. Given that the Mayor's initiatives require OEMC to incorporate more non-emergency services into the CAD system, as well as the need for constant monitoring, servicing and upgrading of the program based on homeland security and other public safety concerns, it is critical that there be no lapse in this contract. As listed below in "Other," the City sets a very high threshold for the vendor to meet with respect to quality, timeliness and availability. If the Northrop Grumman contract expires without a replacement, the City faces a severe public safety crisis.

EXCLUSIVE OR UNIQUE CAPABILITY

The City requires continuous maintenance to, and support for, the CAD System to ensure its uninterrupted operation. Because the software is constantly being upgraded, and thereby acquiring copywrited protection anew, the City can never outright own the CAD system unless Northrop Grumman files bankruptcy. The proprietary nature of the Altaris® software and Northrop Grumman's experience and knowledge uniquely qualify it to provide equipment, software maintenance and support services. However, through the negotiation process, OEMC will look to DPS and DOL to ensure that the City can retain ownership rights over as much work product as possible.

OTHER

We anticipate that the new contract will preserve the following requirements, which set high standards for Northrop Grumman's performance:

- Vendor supports, maintains, tests and reworks all commercial software;
- Vendor develops, installs, procures, tests and reworks all proprietary software;
- Vendor must perform benchmark tests that meet performance standards on each piece of software and equipment to ensure their compatibility and performance;
- Vendor must resolve Major System failures within a specific period of time;
- Vendor is responsible to pay liquidated damages in the event of a major system failure;
- The CAD system must meet an availability requirement for up time during a particular period of time;
- Vendor is held to standard of care of a fiduciary with respect to confidential information;
- Vendor assumes responsibility for all license requirements;
- Vendor grants COC a license in perpetuity for use of proprietary software;
- Vendor makes all technical support available on-site. After hours system support is provided via a secure VPN connection;
- Vendor supports CAD system via telephone modem or VPN within 30 minutes;

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- Vendor supports all proprietary software at all City sites, including but not limited to 1411 W. Madison, 2111 W Lexington and the City's 911 backup Center;
- Vendor furnishes reports and analyses at six (6) month intervals regarding system performance;
- Vendor supplies monthly report of previous activities/support calls;
- Vendor proactively reviews system performance and makes recommendations for future growth;
- Vendor makes available all background reports and employee history on Contractors.

CITY OF CHICAGO ALL PURPOSE REQUISITION FORM

| PAGE ___ OF ___ | | | | | | DEPT USE 1 | | DEPT USE 2 | |

| DATE 2-10-05 | BUREAU/DIVISION Finance | SHIP CODE 991 | SHIP TO: OEMC ATTN: Rochelle Simeon | DATE NEEDED 9-05 | PG'RX NUMBER 19313 | PV NUMBER PV58055800057 |

LINE		COMMODITY CODE	SYS CODE	DESCRIBE AND JUSTIFY GOODS OR SERVICES, OR ENTER CATALOG INFORMATION						UNIT PRICE	UNIT OF MEASURE	QUANTITY		TOTAL PRICE
TERM	FUND			ITEM DESCRIPTION	CATALOG NAME/#	CATALOG DATE	CATALOG PAGE	CATALOG ITEM/PART #				ORDER	RCV'D	
		92045		SOFTWARE MAINTNANCE/					$	4,000,000	YR	5		$20,000,000.00
				SUPPORT										
				NEW Sole Source										

COMMENTS:

CHECK OR COMPLETE ALL THAT APPLY		FY	LINE	FUND	DEPT	ORGN	APPR	ACTV	OBJT	PROJECT	RPTG	DOLLAR AMT.	PAGE TOTAL 20,000,000.00
		05		0100	58	4115	0162						
PARTICIPATING TA #													GRAND TOTAL (ALL PAGES) 20,000,000.00
NEW TA OR CONTRACT	SOLE SOURCE												
PURCHASE ORDER	CONTRACT AMENDMENT												
DIRECT VOUCHER	EMERGENCY REQUEST												
7-DAY BID	REJECTED												

FOR FINANCE OFFICE USE ONLY

CONTRACTS REVIEW	FINANCE DIRECTOR
DATE	DATE
EPS PASS 1	EPS PASS 2
DATE	DATE

VENDOR INFORMATION   INVOICE NUMBER(S)

COMPANY NAME: Northrop Grumman
ADDRESS: 300 S. Wacker STE 1150 Chicago, IL. 60606
VENDOR CODE: 1059249
REP/PHONE: 312-236-2444

BUREAU/DIVISION INFORMATION

SECTION MANAGER/ APRF PREPARED BY: Rochelle Simeon
ADDRESS: 1411 W. Madison Ave.
DATE: 2-10-05   PHONE: 312-746-9447

DEPUTY AUTHORIZATION:
DATE: 2/7/05   PHONE: 6-9420

CP▲C PROJECT CHECKLIST

IMPORTANT: PLEASE READ AND FOLLOW THE INSTRUCTIONS FOR COMPLETING THE PROJECT CHECKLIST AND CONTACT THE APPROPRIATE TEAM LEADER IF YOU HAVE ANY FURTHER QUESTIONS. ALL INFORMATION SHOULD BE COMPLETED INCLUDING THE SUPPLEMENTAL CHECKLIST REQUIRED BY THE SPECIFIC CPAC TEAM. ATTACH ALL REQUIRED MATERIALS AND SUBMIT FOR HANDLING TO THE DEPARTMENT OF PROCUREMENT SERVICES, ROOM 403, CITY HALL, 121 N. LASALLE STREET, CHICAGO, ILLINOIS 60602.

PROJECT

Date: 2-10-05

ID No (Spec, RX, Project).: 19313

Department: OEMC

Bureau: FINANCE

Contract No (if known): 127896

Project Title/Description: Software Maintenance/Support

Contact Person: SARAH KREMSNER

Tel: 6-947 Fax: 6-980 E-mail: _____

Project Manager: _____

Tel: _____ Fax: _____ E-mail: _____

Estimated Value $ _____

SCOPE STATEMENT

___✓___ attached is a detailed scope of services and/or specification

IMPORTANT: THIS IS A CRITICAL PORTION OF YOUR SUBMITTAL. IN ORDER FOR A TEAM TO ACCEPT YOUR SUBMITTAL YOU MUST COMPLETE ALL TEAM SPECIFIC SCOPE REQUIREMENTS AS SET FORTH IN THE SUPPLEMENTAL CHECKLIST FOR THAT TEAM.

The following is a general description of what would be included in a Scope of Services or Specification:
A clear description of all anticipated services and products, including: time frame for completion, special qualifications of prospective vendors, special requirements or needs of the project, locations, anticipated participating user departments, citation of any applicable City ordinance or state/federal regulation or statute.

TYPE OF PROCUREMENT REQUESTED (check all that apply)

__Competitive Bid   __RFQ/RFP/RFS/RFI   ✓Sole Source**   __Term Agreement   __One Shot
__Mod/Amendment   __Time Extension   __Additional Funding   __Small Order   __S/O Emergency

FORMS
__F-25* (add line item)   __F-10* (special approvals)   __SSRB** (sole source approval)
__F-26* (new term agreement)   ✓RX (one-shot requisition)   __OBM Authorization
__F-27* (time extension)   ✓APRF (all purpose request form)
__F-29* (change vendor limit)

** Sole source requests must include vendor quotes/proposal and MBE/WBE compliance requirements

FUNDING

City: ✓Corporate   __Bond   __Enterprise   __Grant*   __Other_____
State: __IDOT/Transit   __IDOT/Highway   __Grant*   __Other_____
Federal: __FHWA   __FTA   __FAA   __Grant*   __Other_____
Funding Strip(s): 05-0100-058-4115- 0162-220162

* Attach copy of any applicable grant agreement terms and conditions

TIME FRAME

Date Needed: 9/05

Requested Contract Term (y/m/d): 8/31/2010

PRE BID/SUBMITTAL REQUIREMENTS

Requesting Pre Bid/Submittal Conference? __Yes ✓No   Requesting Conference be Mandatory? __Yes ✓No
Requesting Site Visit?   __Yes ✓No   Requesting Site Visit be Mandatory?   __Yes ✓No

CP▲C PROJECT CHECKLIST

ARCHITECTURAL/ENGINEERING SUPPLEMENTAL CHECKLIST
Required Attachments: Scope of Services, including location, description of project, services required, deliverables, and other information as required
Risk Management
Will services be performed within 50 feet of CTA train or other railroad property?   __Yes ✓No
Will services be performed on or near a waterway?   __Yes ✓No
Pre-Qualification Category No._____   Category Description:_____
For Pre-Qualification Program, attach list of suggested firms to be solicited
Other Agency Concurrence Required:__None __State __Federal __Other (fill in)_____

AVIATION CONSTRUCTION SUPPLEMENTAL CHECKLIST
DOA sign-off for final design documents: __Yes ✓No
Required Attachments:
Copy of Draft Contract Documents and Detailed Specifications.
Risk Management:
Current Insurance Requirements prepared/approved by Risk Management: Yes___ No ✓
Will work be performed within 50 feet of CTA or ATS structure or property? Yes___ No ✓
Will work be performed airside? Yes___ No ✓

CAPITAL EQUIPMENT (VEHICLES) SUPPLEMENTAL CHECKLIST
Required Attachments:
__ Detailed Specifications including detailed description of the vehicle(s) or equipment, mounted equipment, if
    any, and options/accessories.
__ Special Provisions (Delivery, Warranty, Manuals, Training, Additional Unit Purchase Options, Bid Submittal
Information, etc.)
__ Delivery Location(s)
__ Technical Literature
__ Drawings, if any
__ Part Number List (___Manufacturer; or ___ Dealer; ___ or Other Source: _____)
__ Copy of current Price List(s)/Catalog(s)
__ Form F-10 or other authorization document
__ Any other exhibits and attachments

COMMODITIES SUPPLEMENTAL CHECKLIST
Required attachments:
__Copies of price lists, catalogs, drawings, variations of part numbers
__Any other exhibits or attachments

CONSTRUCTION SUPPLEMENTAL CHECKLIST (LARGE & SMALL)
Required attachments: Copy of Draft (80% Completion)
Copy of Draft (80% Completion) Contract Documents and Detailed Specifications
Risk Management
Will services be performed within 50 feet of CTA train or other railroad property?   __Yes ✓No
Will services be performed on or near a waterway?   __Yes ✓No

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CP▲C PROJECT CHECKLIST

DELEGATE AGENCY SUPPLEMENTAL CHECKLIST
Required attachments:
Attach Scope of Services that includes the following information 1) Program background & objectives; 2) Type of services for which proposals are sought; 3) Location and time line for delivery of services; 4) Qualifications, skills, and/or experience necessary; 5) Special licenses or certifications required; 6) Evaluation process (if known).
Other Attachments (please submit all that apply)
1. Copy of grant application and/or grant agreement
2. Evidence of award authority (DAAC agenda with agency name highlighted; City Council ordinance with agency name highlighted; or OBM letter)
3. Modification information (Copy of Form F-8A; screen print of EPS AWDS table)

Does program require Executive Order 91-1 clearance?	__Yes ✓No
Is boilerplate from Law available or in production?	__Yes ✓No
Would your department benefit from technical assistance?	__Yes ✓No

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HARDWARE/SOFTWARE SUPPLEMENTAL CHECKLIST
__ITSC (approved by BIS)

__OBM (approved by Budget form/memo)

Attach any documentation indicating any previous purchase activity to assist in the procurement process
__Grant document attached

PROFESSIONAL SERVICES SUPPLEMENTAL CHECKLIST
✓ Detailed scope of services as described on page 1.
__ The Schedule of Compensation
__ Deliverables
__Request for individual contract services (if applicable)
✓ The appropriate EPS form
* If this is a Telecommunications/Utilities project, please also address the following:

Has the project been reviewed by DGS?   __Yes ✓No
Attach copy of DGS Recommendation; Reservation(s); or participate under current contract.
Does the project include software?   __Yes ✓No
    If yes, is signed ITSC form attached?   __Yes ✓No
Does the location involve:
    A public way?   __Yes ✓No
    Any concession in the City's facilities?   __Yes ✓No
Is it anticipated City Council approval of the project or contract will be required? __Yes ✓No

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CPAC PROJECT CHECKLIST

SMALL ORDERS SUPPLEMENTAL CHECKLIST

Yes No

___ ___ 1. Special Approval Form/Justification Letter.
   e.g. (Emergency Contract, Telecommunication Back-up documents, Proposals , EPS Form F-10, etc.,).
___ ___ 2. Suggested Vendor.
___ ___ 3. Commodity Code, Manufacturer, Catalog Information, Model No., Quantity, Unit Cost/Measure, Color etc.,
___ ___ 4. Detailed Specification or Scope of Work.

ATTACHMENT REQUIRED FOR EACH SMALL ORDERS PROCUREMENT TYPE
(Check Appropriate Group)

1.   **ONE SHOT (PN)**   **3.**   **EMERGENCY CONTRACT**

               YES ( )   NO ( )   Justification Letter
YES ( )   NO ( )   Detailed Specifications   YES ( )   NO ( )   Vendor Proposal
YES ( )   NO ( )   Suggested Vendor   YES ( )   NO ( )   Pre-assigned Requisition (RX)
YES ( )   NO ( )   Support Documentation

               4.   **TELEPHONE/FAX BIDS**

               YES ( )   NO ( )   Justification Letter

2.   **SOLE SOURCE REQUIREMENTS**

YES ( )   NO ( )   Vendor Proposal
YES ( )   NO ( )   Disclosure Affidavit
YES ( )   NO ( )   Letter of Exclusive or Unique Capability
YES ( )   NO ( )   Support Documentation from Vendor/Manufacturer.
YES ( )   NO ( )   Signature(s) of Originator or Departmental Head/Designee.

WORK SERVICES & FACILITY MAINTENANCE SUPPLEMENTAL CHECKLIST

Required Attachments: Detailed Specifications (Scope of Services) including detailed description of the work, locations (with supporting detail), user department contacts, work hours/days, laborer/supervisor mix, compensation and price escalation considerations, contract term and extension options, contractor qualifications, citation of any applicable City/State/Federal statutes or regulations, citation of any applicable technical standards and price lists, catalogs, technical drawings and other exhibits and attachments as appropriate.

Risk Management

Will services be performed within 50 feet of CTA train or other railroad property?   ___Yes ✓No
Will services be performed on or near a waterway?   ___Yes ✓No
Will services require the handling of hazardous/biowaste material?   ___Yes ✓No
Will services require the blocking of streets or sidewalks in any way?
   Which may affect public safety?   ___Yes ✓No

CITY OF CHICAGO
PURCHASE REQUISITION

Copy (Department)

DELIVER TO:	
058- OEC1411 1411 W. MADISON Chicago, IL 60607	**REQUISITION:** 19313 **PAGE:** 1 **DEPARTMENT:** 58 - OFFICE OF EMERGENCY COMMUNICA **PREPARER:** Rochelle D Simeon **NEEDED:** **APPROVED:** 2/4/2005

REQUISITION DESCRIPTION

NEW CONTRACT FOR NORTHROP GRUMANN
SPECIFICATION NUMBER: 33478

COMMODITY INFORMATION

LINE	ITEM	QUANTITY	UOM	UNIT COST	TOTAL COST
1	92045 SOFTWARE MAINTENANCE/SUPPORT	########	USD	0.00	0.00

SUGGESTED VENDOR: NORTHROP GRUMMAN PUBLIC SFTY   **REQUESTED BY:** Rochelle D Simeon

DIST	BFY	FUND	COST CTR	APPR	ACCNT	ACTV	PROJECT	RPT CAT	GENRL	FUTR	Dist. Amt.
1	005	0100	0584115	0162	220162	0000	00000000	000000	00000	0000	0.00
										LINE TOTAL:	0.00

REQUISITION TOTAL: 0.00

NORTHROP GRUMMAN

DEFINING THE FUTURE

Northrop Grumman Information Technology
Public Safety Inc.
300 S Wacker Drive – Suite 1150
Chicago, IL 60606-6601
312-542-7501

February 1, 2005

Mr. Jim Argiropoulos, Director
Information Services
Chicago OEMC
1411 W Madison St
Chicago, IL 60607

Dear Mr. Argiropoulos:

Northrop Grumman Information Technology (NGIT) is the sole vendor that can provide single-contract, single point of contact maintenance and support of your entire Altaris Computer Aided Dispatch System.

The software applications, communication drivers, reporting programs, and external interfaces provided by NGIT are proprietary and have been copyrighted. In addition, technical professionals who are competent in these technologies do not easily comprehend the complex relationships within the NGIT written applications. Otherwise experienced programmers who need to modify NGIT applications traditionally attend system engineering training courses. Even after the successful completion of these courses, support staff often require additional assistance. In the event a third party vendor were to modify or corrupt this existing infrastructure, without a valid executed agreement including NGIT, NGIT would be under no contractual obligation to provide the needed assistance in a timely manner.
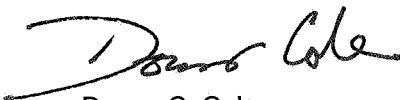
To say that the operations conducted at the Chicago Office of Emergency Management & Communications are critical is an understatement. The safety, well being, and life of nearly 3.5 million residents of the City of Chicago depend on the reliable, steady, and unwavering operation of your highly complex and integrated NGIT systems. The expertise, experience, dedication, and global support network NGIT can provide is unparalleled in the industry and is essential to the reliable operation of your systems.

NGIT is also an original Gold Key reseller of Hewlett-Packard Equipment Corporation maintenance services. Under the Gold Key program, NGIT staff apply their knowledge of the application software to diagnose problems which are not initially classifiable as due to hardware, operating system, or application software. NGIT's standing as a premier Gold Key reseller gives NGIT access to internal HP resources that are unavailable to most end users.

As the provider of comprehensive system service, NGIT is able to accept responsibility for the maintenance of your **entire** CAD system. From the client workstation all the way to field units in patrol cars and fire units, NGIT has no competitors for maintenance, support, and enhancement of the **Total System**.

Please contact me at donno.cole@ngc.com or 312-296-4477 if I can provide any additional information.

Sincerely,

Donno C. Cole
Program Manager

SCOPE OF SERVICES

NORTHROP GRUMMAN INFORMATION TECHNOLOGY

3.1   Scope of Services

(a)   The Contractor will perform the Services set forth in the Task Orders at the rates or amounts set forth in such Task Orders. The Services shall include the system integration to the Equipment, Commercial Software, the Proprietary Software pursuant to the CAD System description, and the provision of preventive maintenance and technical support for the CAD System as set forth in Section 3.9. Such Services shall include design, programming, system integration, installation, training and other services as set forth in this Agreement and in the Task Orders. Beginning in   , each month, broken down by specific Task Order or by element of the Maintenance and Support Program, the Contractor will submit to the Executive Director (1) a report on the work accomplished in the previous month and a status report as to each element or project within each such Task Order or the Maintenance and Support Program ("Monthly Report") and (2) a detailed scope statement describing the work it proposes to do in the following month ("Monthly Scope Statement"). The Monthly Report shall be produced in GANT chart format. The Task Orders may be modified by the Executive Director through Change Directives to provide for adds and, deletions and other modifications within the scope of the Task Orders and within the parameters set forth in Section 3.3 to meet operational requirements so long as the maximum amounts for expenditure set forth in Article 5.1 are not exceeded and the functional requirements set forth in the Task Orders are not reduced.

(b)   The Monthly Report shall be delivered to the Executive Director by the fifth (5th) Business Day of each month. The Scope Statement contained in each Monthly Report shall include a list of the staffing levels and responsibilities for the current and the following month for all outstanding Task Orders. In addition, the Monthly Scope Statement will include a list of what Contractor Work Product is expected to be generated in the following month and the Equipment and/or Software to be procured or delivered in the following month, and the related acceptance tests. The Monthly Report shall describe the Work Product completed and the Work Product from the prior month's Scope Statement which is still not completed. The Executive Director will review the Monthly Scope Statement, and, in his sole discretion, if acceptable, the Executive Director will approve the Monthly Scope Statement within five (5) Business Days and authorize the Contractor to proceed with the Services and/or the purchase of Equipment/Software. Subject to the first paragraph of Section 3.1, if changes to the next month's Contractor Work Product in such Monthly Scope Statement are required, the Executive Director will notify the Contractor promptly of the need for changes. The Contractor shall promptly revise the Monthly Scope Statement as to such future Work Product and submit it to the Executive Director, who will review it in accordance with the procedures outlined above.

3.2   Deliverables

In carrying out its Services, Contractor must prepare or provide to the City various Deliverables. Specific Deliverables are or will be outlined in each Task Order and may include written reviews and recommendations, as built documents, preparation for review of the City of functional requirements, scopes of work, software and CAD System operational manuals and documentation, implementation schedules, cost estimates (consistent with this Agreement), testing plans, instruction manuals, training plans, cut over or phase over plans for specific Task Orders and all other reports produced by the

Contractor for the City, including reports related to the Support and Maintenance Program or specific incidents or elements related thereto.

The City can reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in a Task Order or reasonably necessary for the purpose for which the Task Order was issued or for the intended use of the Deliverables.

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

Any and all modifications to existing procedures, which result in changes being made to instructional manuals, must be provided to the City in both hard copy and electronic media formats. When a change to a document occurs, the entire document must be provided to the City, not just the section that was changed. The electronic media copy of documents must be provided in [**Corel Word Perfect version 8.0 or later**], if agreed to in advance by the City.

[**All graphics, within a document, must be defined as an image on disk and must be in color. Additionally, the path to the disk image must be located on the OEMC network in a directory determined by the City. If a document is modified, all references to graphic images within that document will be modified to comply with the preceding sentence. Version control and numbering systems for all new and modified documents will be controlled by the City. Printer formatting of the documentation must be agreed upon by the City and vendor prior to document preparation.**]

3.3   Change Orders; Change Directives; Delays

(a)   The City may order changes in Services, including the Equipment or Software to be provided, covered in an outstanding Task Order ("Request"). Such changes may include the addition of extra work, Equipment, Software, materials or equipment, the deletion of work, materials or equipment, substitutions thereof or changes in the manner of completing a Task Order. The City will provide written notice to the Contractor of any proposed change in the work by a letter signed by the Executive Director, or his designee. Contractor shall, within ten (10) days after receipt of any Request, comment to the City in writing whether or not such Request would require a delay of time or result in an increase or decrease in the price set forth in an outstanding Task Order or have any permanent or temporary material adverse effect on the functions or performance of the CAD System, giving the details thereof, including whether the price set forth in an outstanding Task Order would be affected or if an extension of time would be necessary, as well as any proposed change in price and proposed extension time ("Request Comments").

A Change Order is the written order to Contractor signed by the Executive Director and the Chief Procurement Officer authorizing a material change in the Services or a material change in the method or manner of performance of the Services covered under the Agreement or under an outstanding Task Order after receipt of Request Comments, if any, from the Contractor. A Change Order shall set forth the adjustment, if any, in price and Schedule under one or more outstanding Task Orders as well as any permanent material adverse effects as the functions or performance of the CAD System. Contractor shall submit a price proposal in response to any notice of a material change properly itemized and supported by

sufficient substantiating data to permit evaluation, including unit prices as appropriate. Each Change Order shall set forth the elements of the applicable Task Orders to be changed. The price under a Task Order will be increased by the aggregate amount of any price changes assessed in connection with any such change and a Change Order may be authorized in the appropriate amount. If an adjustment in price under an outstanding Task Order in connection with a change in the Services is not agreed upon and it is both a matter of public safety and there is an exigent or urgent need for the change in Services and not proceeding therewith will cause a delay in the implementation Schedule, then Contractor, upon written order signed by the Chief Procurement Officer and the Executive Director, shall proceed with the work directed by the Change Order and pursue the dispute in accordance with Article 6 of this Agreement. If any Change Order(s) results in a decrease in price, the City will get the benefit of such decrease.

(b)   Notwithstanding (a) above, the Executive Director may issue Change Directives for the following purposes without necessity of either an amendment to this Agreement or a Change Order in accordance with Section 3.1 of this Agreement:

(i) to effect a change in an outstanding Task Order agreed to by the Contractor which is (a) beneficial to the City (without reducing either the functionality or performance of the CAD System or the S9-1-1 System or the scope of work in such Task Order), (b) does not increase or decrease the cost of a Task Order, (c) does not (either individually or taken together with other related changes) effect a material change in Services provided or the Products procured under the Task Order and (d) does not extend the time allowed to complete the Task Order;

(ii) to reallocate line items within the total cost of an outstanding Task Order without resulting in any net change in such Task Order amount or causing any loss of functionality or performance required in the Task Order or in the CAD System or the S9-1-1 System or extend the time allowed to complete a Task Order; and

(iii) where unit prices are established in a Task Order, to order additional units so long as such increase does not exceed the applicable maximum amounts set forth in a Task Order or extend the time allowed to complete a Task Order.

Copies of all Change Directives will be sent to the Chief Procurement Officer promptly. Nothing herein shall permit any changes other than those set forth in this paragraph (b) without an amendment to this Agreement or a Change Order.

(c)   Any delays caused by the City will not increase the price to the City set forth in a Task Order. Extensions of any time schedules agreed to by the parties in a Task Order will be granted by the City upon a reasonable showing that the City was responsible for the delay or the delay was due to circumstances beyond Contractor's reasonable control as further described in Section 4.5(c).

3.4   Clarification Procedures

Except as set forth elsewhere in this Agreement, each party will have ten (10) Business Days to respond to written correspondence from the other party which requires a written response. **[Failure to respond will be deemed acceptance.]**

3.5   Testing

(a)   Subject to the provisions of this Section 3.5, the testing and acceptance criteria for Products in each Task Order are generally set forth in such Task Order. Except for Benchmark Testing, testing as to Products shall be conducted in Acceptance Phases which are mutually agreed to in writing by the Executive Director and the Contractor.

(b)   Prior to commitment of delivery of any Product or series of Products under a Task Order to the City, Contractor shall have configured, assembled and performed Benchmark Tests on a prototype of such Product or series of Products. Such Benchmark Tests shall include testing of each piece of Equipment and each Software program contained in the prototype both independently and, where applicable, as an integrated unit. Each Task Order shall identify the type, nature and time period of Benchmark Testing for all Products contained in such Task Order. In the case of the CAD System Enhancement Task Orders, the Benchmark Test Period shall last, as to each Software load, over a period of fourteen (14) consecutive business days without material fault in order to be successfully completed. The City shall participate in Benchmark Tests and may direct that additional Benchmark Tests be conducted as long as the cost to Contractor is not materially increased by such additional Benchmark Tests. In the event that a prototype of a Product fails to meet the applicable Performance Standards during the applicable Benchmark Test Period, then the Contractor must either withdraw the prototype for further evaluation and improvement or perform the Benchmark Testing again until the Benchmark Tests are successfully completed.

(c)   Upon successful completion of Benchmark Test as to Products in a Task Order, the City shall notify the Contractor that Benchmark Tests as to prototypes for Products within that Task Order have been completed and that such Products meet the applicable functionality requirements for the Products and may be installed in City Facilities ("Benchmark Acceptance").

(d)   Following Benchmark Acceptance, the Products in a Task Order will be delivered and installed in one or more Acceptance Phases at the City Facilities specified in the Task Order. Following completion of installation of the Products in each Acceptance Phase, the City will operate the Products in an operational environment for a continuous period of thirty (30) days to determine if the Products as installed meet the Contractor's Benchmark Tests performed on a prototype basis in paragraph (a) ("Product Acceptance Period") both on a stand-alone basis and as an integrated part of the CAD System. Operational Testing will be set forth in the applicable Task Order.

(e)   If the operating performance or functionality of any of the Products within an Acceptance Phase fails to meet the Performance Standards during the Product Acceptance Period described in paragraph (c) above, the Product Acceptance Period for such Products may, at the sole option of City, be repeated until the Product Acceptance Period is successfully completed, or, with City's written consent, Contractor may (a) modify or adjust the Products to meet the Performance Standards during a new Product Acceptance Period; and/or (b) replace or add such Products as may be necessary to make the Products meet the Performance Standards during a new Product Acceptance Period.

(f)   After any adjustment, modification, repair or replacement, the Product Acceptance Period described above must be run again and, if the Products still fail to meet the Performance Standards, the City will have the right to, at the City's sole option, either cancel this Agreement or cancel the Task Order,

and, if applicable obtain the damages identified in Section 9.1 (a)(xi). In no event will Product Acceptance for an Acceptance Phase occur or the Products be deemed to be fully installed and accepted until the established standards described for the Product Acceptance Period have been met. Upon the Executive Director's sole determination that the Product Acceptance Period for an Acceptance Phase has been successfully completed, the Executive Director will inform the Contractor, in writing, of Product Acceptance for such Acceptance Phase.

(g)   In addition to any specific requirements set forth in a Task Order, Final Acceptance as to any Task Order shall be deemed to occur only upon the successful completion of Product Acceptance for all Acceptance Phases for such Task Order. Contractor must certify to the City that (i) all Products under such Task Order have been successfully installed; (ii) Product Acceptance has occurred for all such Products and (iii) that at Final Acceptance, the CAD System as a whole meets or exceeds the Performance Standards set forth in Section 3.6 and Exhibit 7. Upon the Executive Director's Certification (which shall not be unreasonably refused) that Final Acceptance as to a Task Order has occurred, Product Warranties for all Products within such Task Order shall be deemed to commence.

(h)   If, prior to Final Acceptance during any Task Order, the CAD System, the S9-1-1 System or any portion thereof suffers a Major Failure, as a consequence of such Task Order, and such failure was caused by Contractor or any of its Subcontractors, Contractor shall immediately commence efforts to cure such Major Failure. If Contractor fails to cure such Major Failure or fails to restore the CAD System, the S9-1-1 System or any significant portion or element thereof to its previous normal operational state within eight (8) hours, Contractor shall pay Liquidated Damages of Five Thousand dollars ($5,000) per day for each day that such Major Failure is not remedied to a cumulative maximum amount of Five Hundred Thousand Dollars ($500,000) unless an extension is granted by the City; provided that the City retains the right at any point after Liquidated Damages have commenced to declare Contractor in default under Section 9.2 and obtain the remedies set forth in Section 9.3 in lieu of obtaining such Liquidated Damages. The parties acknowledge and agree that because of the unique nature of the S9-1-1 System, it is difficult to determine with precision the amount of damages that might be incurred by the City as a result of a breach by Contractor of this paragraph 3.5(h). It is further understood and agreed that any sums payable under this paragraph 3.5(h) are an estimate of any actual damages arising from such delay, are liquidated damages and are not a penalty.

Major Failure is defined as a total or material partial failure of the CAD System, the S9-1-1 System or any subsystem thereof which is of such magnitude that "Fall Back Procedures" (including, but not limited to resort to manual dispatch operations) are reasonably instituted to continue operations of that particular system or subsystem.

3.6   Performance Standards; Professional Standards

(a)   Neither the performance of any Task Order nor the performance of any work under this Agreement shall degrade the Performance Standards for the CAD System, or any improved Performance Standards which result from City authorized and approved modifications, enhancements or changes to the CAD System performed by Contractor (as such improved Performance Standards may be agreed to by the parties). At all times during the performance of work under this Agreement, the CAD System shall meet or, upon mutual agreement, exceed the Performance Standards. In addition, the following supplemental performance levels must be adhered to:

1.	No work performed under this Agreement nor under any Task Order nor any Software or Equipment introduced into the CAD System as a result thereof shall degrade, restrict, or reduce the end user's present CAD System's operation functionality as set forth in Exhibit 7.

2.	During and after completion of any work under this Agreement or any Task Order, the use by the City of the CAD System in the performance of system commands and tasks, (both internally and initiated by the Altaris® System) and the use of any other part of the S-9-1-1 System or any Software used in connection with this Agreement shall not degrade, or lessen the Performance Standards, including but not limited to service levels, end-to-end command executions, task response times, optimum concurrent and serially executable task and commands, and concurrent number of on-line and active CAD System users.

3.	During and after performance of any work under this Agreement and during and after completion of performance of any Task Order, the CAD System functionality shall not be burdened by additional end user procedural operations unless previously agreed to in writing by the City.

4.	During the period of this Agreement and all subsequent extensions of this Agreement pursuant to amendment, except for City-approved planned outages, the CAD System must be available for use in accordance with the Performance Standards ("CAD System Availability") not less than 98% in any 24-hour period; not less than 98% in any 7-day period; and not less than 99.5% in any 30-day period ("Availability Requirement"). If the CAD System fails to meet the Availability Requirements for more than three consecutive days, or more than two consecutive weeks; or more than two consecutive months, the City will notify Contractor within a reasonable time that the System does not meet the required CAD System Availability Requirements. CAD System Availability Requirements for use is determined by dividing the actual minutes of CAD System up-time during a particular time period (e.g. days, weeks, months) by the total amount of minutes in such time period. For example, if the CAD System was only available for 12 hours on one particular day, the CAD System Availability that day would be 50% (720 minutes / 1440 minutes).

The Performance Standards set forth in this Section 3.6 and in Exhibit 7 may not be modified without express City approval and waiver as set forth in a Change Order executed by both the City and Contractor.

(b)	The Contractor must perform all Services required of it under this Agreement and each Task Order with that degree of skill, care and diligence normally shown by a contractor performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Contractor acknowledges that it is entrusted with or has access to valuable and highly confidential information and records of the City ("Confidential Information") and with respect to the Confidential Information and to this Agreement, Contractor agrees to be held to the standard of care of a fiduciary. All Services completed under this Agreement once completed shall result in a Work Product which meets or, upon mutual agreement, surpasses the functional requirements set forth in the Agreement and any applicable Task Order and will satisfy the statement of work set forth in the Agreement and any such Task Order, as modified by Change Directive.

(c)   Contractor must assure that all Services that require the exercise of professional skill or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Upon the request of the City, Contractor must deliver to the Executive Director copies of any such licenses. Contractor shall be responsible for the professional and technical accuracy of all Services or Work Product furnished, whether by Contractor or its Subcontractors or others on its behalf. All Work Product must be prepared in a form and content consistent with the requirements of this Agreement and delivered in a timely manner consistent with the requirements of this Agreement.

(d)   Subject to this Agreement, if Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Work Product. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity. Equipment or Software introduced into the CAD System solely by Contractor or its Subcontractors must integrate as to form, fit and function with existing CAD System hardware and software. Failure of the CAD System or of the S9-1-1 System as a result of the introduction of the Equipment or the Software will be reworked and performed at the Contractor's expense. The City is not liable for systems failures caused by Contractor or any Subcontractor.

3.7   Equipment; City Modifications

(a)   Subject to Section 3.3, the Contractor shall supply the Equipment as requested by the Executive Director in the Task Orders. All Equipment shall be new shall conform to the requirements hereof, shall conform to the manufacturer's specifications, and shall be consistent and compatible with the CAD System. The Contractor will demonstrate the Equipment for the City, and perform all acceptance testing the City deems reasonably necessary to demonstrate functionality and completion of the statement of work set forth in the Task Order. Title and ownership of the Equipment in an Acceptance Phase will remain vested in Contractor until Product Acceptance by the City of such Equipment. Upon acceptance of the Equipment in an Acceptance Phase, the City will issue to Contractor a Product Acceptance Notice ("Acceptance Notice") for such Acceptance Phase. Upon receipt of an Acceptance Notice for the Equipment in an Acceptance Phase, Contractor shall deliver to City its bill of sale for such Initial Equipment, and such other title documents as the City may reasonably request consistent with industry practice. The Contractor warrants it shall deliver to City good and satisfactory title to all Equipment at the time of payment therefore, free and clear of all liens, claims, charges or encumbrances whatsoever. The Contractor shall bear the cost of Equipment, transportation, delivery, unpacking, and, if necessary, storage; provided that the City shall reasonably make ready the operational area housing the Equipment in a timely manner. Any leasing of the Equipment shall be done through an amendment to this Agreement.

(b)   In connection with the implementation of the Task Order, the City will, under the general supervision of the Contractor, undertake certain limited tasks. Such limited tasks are for the convenience of the Contractor and performance thereof does not either shift the risk of loss as to Products or reduce or vitiate any Contractor's warranties as to the Products set forth in this Agreement, which shall remain as set forth in this Agreement.

(c)   (1) In the event City wishes to permanently connect any Equipment or any Software to the CAD System not already agreed to by the parties ("City Permanent Modification"), City will notify Contractor in writing at least thirty (30) days prior to any such City Permanent Modification. Contractor shall respond in writing to the City regarding the proposed City Permanent Modification within said thirty (30) day period. Such response must advise in sufficient detail whether or not the City Permanent Modification would materially adversely affect performance of the CAD System or the S9-1-1 System. To the extent Contractor determines that the City Permanent Modification will not have such a material adverse impact, then the Contractor's warranties for system performance remain in full force and effect.

(2) If the Contractor determines a City Permanent Modification will, to the extent set forth in the letter referred to in (c)(1) above, materially adversely impact performance of the CAD System or the S9-1-1 System, Contractor shall give the City written notice of such adverse impact in accordance with paragraph (c)(1) above. If the City decides to proceed with the City Permanent Modification, the Contractor's warranties for system performance for those portions of the System materially adversely affected by the City Permanent Modification may be reduced to the extent specifically described in Contractor's letter. Any problems encountered in CAD or S9-1-1 System performance engendered by City Permanent Modification may be corrected by the Contractor after an equitable adjustment to the contract price has been negotiated with the City.

(3) The City is entitled to make temporary modifications (for diagnostic and other purposes) ("City Temporary Modification") that directly or indirectly interact with portions of the System maintained by Contractor without Contractor's review of the City Temporary Modification. In the event that such a City Temporary Modification adversely impacts System functionality or performance, the Contractor shall give written notice to the City providing reasonable grounds for establishing the City Temporary Modification as the source of the reduction in functionality or performance. Upon City receipt of this notice, a new baseline for CAD System performance will be in effect for so long as such City Temporary Modification remains part of the CAD System and Contractor's remedy, if any, of functional or performance related problems arising directly from the City Temporary Modifications, if accepted by the City, would become an additional cost item subject to modification of the applicable Task Order. The City, however, shall have, upon receipt of such written notice from Contractor, the option to remove such City Temporary Modification and restore the System to its prior state, in which case the Contractor warranties shall be in full force and effect upon such removal.

3.8   Software; New Releases

(a)   Contractor shall support, maintain, test and rework as necessary the Commercial Software described in Exhibit 1 at charges set forth in _____. Contractor shall also develop, install, procure, test and rework as necessary the Proprietary Software described in Exhibit 1 at the charges set forth in _____. Upon Product Acceptance of all Commercial Software in a Product Acceptance Phase, Contractor shall provide the City with licenses in perpetuity sufficient in scope for the City to be able to use, operate and maintain the CAD System as contemplated in this Agreement. If third party commercial terms do not permit a perpetual license, Contractor will use its best efforts to ascertain such information and provide notice to the City of this restriction prior to award of a Task Order. If Contractor becomes aware that third party commercial terms do not permit a perpetual license either prior or subsequent to award of a Task Order, Contractor must promptly notify the City of this restriction and provide the City to the extent possible with alternatives having such perpetual license. Upon Final Acceptance of Proprietary

Software, the City will issue to the Contractor an Acceptance Notice for the Proprietary Software. Upon Final Acceptance for the Proprietary Software Contractor shall grant to the City a license in perpetuity to use the Proprietary Software sufficient in scope for the City to be able to use the Proprietary Software for the CAD System as contemplated in this Agreement. Contractor shall perform testing on all elements and programs of the Software required to ensure CAD System functionality. The scope of the respective licenses to be delivered is described in section 3.16 and the license fees for each application of the Software is set forth in the applicable Task Order.

(b)   In connection with the implementation of the CAD System Enhancements governed by Task Orders, the City will review and comment in a timely fashion on advance copies of documentation deliverables and assign a Task Order coordinator to coordinate schedules for implementation. In addition, the City will conduct testing as set for in Section 3.5 and in a timely manner identify and document discovered faults, errors and omissions in the Proprietary Software. Such limited tasks do not reduce or vitiate Contractor's warranties as to the Products set forth in this Agreement, which shall remain as set forth in this Agreement.

(c)   If requested by the City, Contractor will provide or cause to be provided notice to the City of all updates, enhancements or modifications to the Commercial Software issued during the term of this Agreement and the cost therefore. Contractor must further notify the City of the probable effect on the CAD System of installation of such update, enhancement, or modification, and provide a recommendation to the City as to whether or not any such update, enhancement, or modification should be installed. Following receipt of Contractor's notice and recommendation, the City may elect whether to have such updated, enhanced, or modified Commercial Software installed in the CAD System and whether to incur the costs for such updated, enhanced or modified Commercial Software.

(d)   During the term of this Agreement, Contractor must provide the City, at no additional charge, with all updates, enhancements, or modifications to the Proprietary Software.

3.9   Maintenance and Technical Support Program

Note: Require all support to be located within the OEMC. No longer will except remote support.

(a)   During the term of this Agreement and all subsequent extensions of this Agreement pursuant to amendment, Contractor shall provide the Maintenance and Technical Support Program for the CAD System at rates set forth in Exhibit 8 in compliance with the Performance Standards. The Contractor is not responsible for the City Maintained Equipment (as set forth in Exhibit 1) or for the maintenance of the equipment not provided pursuant to a Task Order; provided that Contractor shall be responsible for maintenance of all portions of the CAD System provided pursuant to a Task Order and for resolving defects or deficiencies arising from the interaction of City's Maintained Equipment and all other components of the CAD System. The Preventive Maintenance and Technical Support Program shall maintain the CAD System in compliance with the Performance Standards set forth in Section 3.6 and Exhibit 7. The Preventive Maintenance and Technical Support Program shall include warranty maintenance on all Equipment and Software within a Task Order at no additional charge to the City for a period of one year following Final Acceptance of such Equipment and Software. Nothing in this

Agreement or the performance of the Contractor hereunder shall affect or reduce the obligations Contractor may have under the Maintenance Services on existing CAD System hardware and software at no charge through the warranty period.

(b)   The Maintenance and Technical Support Program shall be structured to provide on-call support 24 hours a day, seven days a week including all holidays. This support must be in the Chicago land area. Maximum response time by telephone shall be 30 minutes for all Maintenance Reports. Maximum response time by remote modem access or by on-site visit shall be **thirty-minutes** for Maintenance Reports deemed "critical" by the City. Non-critical Maintenance Reports will be responded to within the next Business Day in the order agreed by the parties. Specific deviation from the above requirements may only occur upon written approval of the Executive Director.

Non-Critical: This will be determined by the OEMC.

Current resources, i.e.,: Applications Programmer, Data Base Administrator, Systems Administrator and NT/Network Support must be dedicated to the Office of Emergency Management and Communications Project. Any utilization of the stated aforementioned resource consultants outside of the Office of Emergency Management and Communication's contract should be placed in writing to the Executive Director before committing.

(c)   Contractor must remedy any defect in any Software or Equipment or in any integration or interface between the Software and the Equipment and either repair, or at the City's option, replace the defective element or module or swap any defective unit. Contractor shall supply, at no additional cost, all replacement parts or elements and perform or cause to be performed, all labor necessary to ensure proper function of the CAD System Software.

(d)   If, in performance of the normal maintenance update program, the Contractor determines that System performance will not be adversely affected, the Contractor shall provide one copy of any updated release of Proprietary Software and Commercial Software, or part thereof, without charge which the City may copy in the appropriate quantity and substitute in a prior release. In addition Contractor must provide published bulletins describing new releases, maintenance releases, temporary problem resolution and circumventions, support level change and other information with respect to all Software except for Contractor's then-applicable mailing and media changes.

(e)   As part of the Maintenance and Technical Support Program, Contractor shall furnish professional dedicated technical personnel to provide Operational Support Services ("OSS Services") on site at the City's Office of Emergency Management and Communications, located at the Chicago Emergency Communications Center located at 1411 West Madison, or as needed at the Remote Site located at the Backup Communications Facility at 2111 West Lexington, **or as deemed appropriate by the City**. Contractor will ensure that its personnel or its Subcontractors' personnel providing OSS Services must be familiar with and skilled in dealing with the CAD System environment. This should include but is not limited to CAD hardware and software, policies and procedures and should also include Operations' floor familiarity. **[For OSS candidates, we need on a monthly basis transmitted in the monthly report sick/vacation time earned.] Candidate must posses some level of training in any one of the areas of networking, UNIX, server-client etc.**

Because of the sensitive and confidential nature of the CAD System and the OEMC, the City reserves the right to conduct reasonable background checks to the extent permitted by law on personnel providing OSS Services. The City will provide reasonable cooperation in educating Contractor's personnel in the CAD System environment. The City shall direct the use of Contractor's personnel providing OSS Services and the City reserves the right to determine, in cooperation with Contractor, the appropriate staffing levels and work schedules for OSS Services. OSS technicians provided by Contractor shall be responsible for executing computer operations tasks and "Help Desk" assignments as documented in Contractor's Computer Operations manual provided to the OEMC, provided that the City may modify, include or exclude other computer operations tasks or "Help Desk" assignments. The City may also direct Contractor in writing to retain or replace technicians providing OSS Services. As directed by the City, Contractor will replace dismissed OSS personnel or leave such positions vacant within (10 business days) 20 days of dismissal. The City and the Contractor may also add to or delete personnel performing OSS Services as needed. OSS technicians shall follow all City work assignment and attendance regulations, including the use of time sheets and will not use City resources for personal use unless authorized by the City. The Contractor shall provide on the monthly report the total accrued vacation and medical time with usage balances for each OSS Contractor. The Contractor shall also provide a yearly Holiday Designation Schedule for the OSS Contractors. Absences from work for any reason by OSS technicians must be coordinated with and approved by the City and in case of any absence, Contractor shall provide to the City an acceptable and suitable replacement. Discrepancies in attendance or assignment of OSS Service technicians shall be negotiated and resolved by Contractor immediately upon being brought to Contractor's attention. The City and Contractor will meet quarterly or more frequently if required by the City to discuss OSS Service performance and to resolve outstanding issues. Contractor shall use its best efforts to keep the same OSS technicians in place through the term of this Agreement.

Excessive tardiness or sick abuse (four times in one calendar year) will be grounds for dismissal. Note: Project Management must be improved and corrected.

(f)   Contractor shall furnish reports and analyses for CAD System performance and verifiable system performance measurements, together with statistical data, charts and graphs as reasonably requested by the City. Such reports shall be furnished no less frequently than annually, but may be furnished at six month intervals at the Executive Director's request. Such reports and measurements shall be in a format agreed to by the City and Contractor. These should be furnished with the monthly status report.

(g)   Contractor shall provide special OSS Services not covered in the Preventive Maintenance and Technical System Program at the request of the Executive Director at the rates to be negotiated through a Change Order.

(h)   Contractor shall also provide through its OSS Services support and information to OEMC personnel Subcontractors and third party vendors regarding problem identification and resolution. Contractor shall also provide support as to Commercial Software reports and City access to such reports for the UniQ Batch **and JAVA** report menu and reports launcher, or such alternative report menu and reports launcher as the City may utilize.

(i)   The City will be responsible for the limited tasks and activities associated with maintenance of the CAD System set forth below. Such limited tasks are for the convenience of the Contractor and performance thereof does not reduce or vitiate any of Contractor's warranties for the Products set forth in this Agreement which shall remain as set forth in the Agreement.

1.   The City will provide "Level I" problem detection following the procedures set forth in Exhibit 6.

2.   The City will assign a primary contact to assist Contractor in the coordination of schedules for Contractor's maintenance activities.

3.   The City will perform system file disk back-ups in accordance with Contractor provided and documented procedures.

4.   The City will provide Altaris® System security in accordance with Contractor provided and documented procedures.

(j)   The Contractor will:

1.   provide for data integrity, file management and system configuration management.

2.   perform file management and system configuration and software audits as part of their normal business practices in providing proactive preventive maintenance, and as may be requested by the City.

3.   identify, evaluate, and report system warning messages, and provide the City with explanations and recommendations for their correction.

4.   evaluate the impact of proposed Equipment and Software upgrades, modifications, and changes to system processes as requested by the City.

5.   assist and advise the City and its third party hardware and software vendors during critical Equipment and Software upgrades, repair services, and/or proposed new applications.

(k)   The City shall determine, in its sole discretion, whether to incur Overtime costs related to OSS Services. Approved Overtime charges shall be submitted by the Contractor to the City, together with supporting documentation including time sheets. If the City determines that payment for Overtime costs related to OSS Services is properly authorized by the City and properly performed by OSS Service technicians, payment shall be made in accordance with Exhibit 10. The City will comply with all applicable Illinois statutes and regulations as to its payment of Overtime costs.

3.10   Risk of Loss

Risk of loss of or damage to items of Equipment, Software and Work Product shall be and remain on the Contractor until the earliest to occur of (i) written acceptance of such item by the City, or (ii) the termination or expiration of this Agreement, whereupon such risk after the occurrence of (i) or (ii), except to the extent specifically provided to the contrary, shall pass to the City.

3.11   Training

Contractor will provide training as set forth in a particular Task Order. The City will cooperate in scheduling such training.

3.12 Minority and Women's Business Enterprises Commitment

It is the policy of the City of Chicago that local businesses certified as Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in accordance with Section 2-92-450 of the Chicago Municipal Code (the "Code"), Ch. 2-92, section 2-92-450 and Regulations Governing Certification of Minority and Women-Owned Businesses shall have the maximum opportunity to participate fully in the performance of all City projects.

The Contractor shall comply, and shall cause its MBE/WBE Subcontractors to comply, with the requirements of the Minority-Owned and Women-Owned Business Procurement Program as set forth in Chapter 2 Section 2-92-420 of the Municipal Code. The requirements for such program are attached hereto and incorporated by reference herein as Exhibit 4.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements For Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" or other affirmative action required for equal opportunity under the provision of this Agreement. Contractor shall include this provision in all subcontracts.

3.13 Insurance

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

(a) **Insurance to be Provided**

(i) <u>Worker's Compensation and Employers Liability Insurance</u>

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 <u>$500,000</u> each accident or illness.

(ii) <u>Commercial General Liability Insurance</u> (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than $5,000,000 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 (with <u>no</u> limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Services.

Subcontractors performing Services for Contractor must maintain limits of not less than

$1,000,000 with the same terms in this subsection.

(iii)   Automobile Liability Insurance (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Services to be performed, Contractor must provide Automobile Liability Insurance with limits of not less than $2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

Subcontractors performing Services for Contractor must maintain limits of not less than $1,000,000 with the same terms in this subsection.

(iv)   Professional Liability Insurance/EDP

When any EDP professionals or other professional consultants perform Services in connection with this Agreement, Professional Liability Insurance covering acts, errors or omissions must be maintained with limits of not less than $5,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of Services on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

Subcontractors performing Services for Contractor must maintain limits of not less than $1,000,000 with the same terms in this subsection.

(v)   Valuable Papers Insurance

When any records, reports, media, data, and/or other documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

(vi)   Property Installation Floater

All risk property/installation insurance at replacement cost insuring loss or damage to equipment, materials and or supplies that are part of the project. The City of Chicago is to be named as an additional insured and loss payee.

Contractor is responsible for all loss or damage to City property at full replacement cost.

Contractor is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by Contractor.

(b) **Additional Requirements**

Contractor must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 403, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, 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 on the City of Chicago Insurance Certificate Form (copy attached as Exhibit-) or equivalent prior to Agreement award. 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 Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Contractor is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. Contractor must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not 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.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

Contractor agrees that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

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

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by Contractor under this Agreement.

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.

Contractor must require all Subcontractors to provide the insurance required in this Agreement, or Contractor may provide the coverages for Subcontractors. All Subcontractors are subject to the same insurance requirements of Contractor unless otherwise specified in this Agreement.

If Contractor or Subcontractor desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

3.14   Indemnification

(a)   Contractor shall defend, indemnify, and hold completely harmless the City of Chicago Indemnities from and against any and all Losses arising under this Agreement. For purposes of this Section 3.14, "City of Chicago Indemnitees" means, individually and collectively, City of Chicago, its officials, agents and employees. "Losses" means, individually and collectively, any and all 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 (a) injury or death of any person, (b) damage to property, (c) infringement of trademarks, trade name, patent, copyright or other proprietary right, (d) the employment relationship of Contractor or any Subcontractor with their respective employees or the termination by Contractor or any Subcontractor of any of their respective employees, (e) any negligent or willful action on the part of Contractor in the performance of its obligations under this Agreement or (f) any breach by Contractor of the terms of this Agreement. "Arising under this Agreement" means (a) arising out of awarding this Agreement; (b) arising out of the enforcement of this Agreement, including the enforcement of this indemnification provision; (c) 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 (d) any combination of any of the foregoing. 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 the judicial decision of *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.

The Contractor's indemnification of the City is expressly conditioned upon the City providing Contractor with prompt written notice of any such claim or suit and upon the City tendering the defense to Contractor which Contractor may elect to accept at its sole option. The City has the right, at its option and at its own expense, to participate in the defense of any claim or suit without relieving Contractor of any of its obligations under this indemnity provision, provided that the City cooperates with and does not hinder the Contractor in any such defense. The City shall not seek to settle nor settle any such claim or suit except with the express written consent of the Contractor. The City may (but is not obligated to) defend any such claim or suit at Contractor's expense if Contractor wrongfully fails to defend or wrongfully abandons the defense of such claim or suit without the City's express consent. The requirements set forth in this indemnity provision are separate from and not limited by Section 3.13 or by any bonds required pursuant to other provisions in this Agreement. Further, the indemnities contained in this provision survive the expiration or termination of this Agreement.

(b)   Contractor warrants that the use of Equipment and Software furnished under this Agreement, by itself, does not infringe any patent or copyright covering such product. Contractor must, at its own expense, defend City against any claim, suit or proceeding brought against City on the issue of any

patent or copyright infringement with respect to the Equipment and Software furnished to City; and pay City any costs , damages and attorney's fees it is found liable for as a result of any lawsuit based on such a claim. City will promptly notify Contractor of any claim which City believes falls within the scope of this paragraph. City will have the opportunity to participate in the defense at City's own expense and will have the right to approve any settlement which adversely affects the City's use or enjoyment of the Equipment or Software, which approval shall not be unreasonably withheld.

Contractor has the right, upon either the occurrence of or the likelihood, in the sole opinion of the Contractor, of the occurrence of a finding of infringement ("Infringement Findings') to:

(i)   Modify the infringing Equipment or Software so it is no longer infringing without adversely affecting the System's performance;

(ii)   Procure for City the right to continue using the Equipment or Software; or

(iii)   Replace the infringing Equipment or Software with other equivalent, non-infringing equipment or software without adversely affecting the System's performance.

If Contractor is unable to accomplish either (i), (ii) or (iii) above within thirty days of an Infringement Finding, then at City's sole option, Contractor must remove the entire System and refund the City the entire amount paid under this Agreement.

Contractor assumes no responsibility for any software which has been changed, modified, adapted or refitted without the express written authorization of the Contractor.

3.15   City Property

Except as set forth in this Agreement and except to the extent that a Work Product is derived from or is an enhancement of Proprietary Software, all Work Product and all Confidential Information provided to the Contractor, are property of the City, including all copyrights inherent in them or their preparation. During performance of its Services, the Contractor is responsible for any loss or damage to City property while in the Contractor's or any Subcontractor's possession, custody or control. Any such lost or damaged City property must be restored at the expense of the Contractor. If not restorable, the Contractor must bear the cost of replacement and of any loss suffered by the City on account of the destruction.

3.16   License: Copyright Ownership

(a)   Contractor owns all rights, title and interest to the Proprietary Software and related documentation, including all custom modifications, derivative works and all technical and functional designs and functional designs relating thereto. Neither the Proprietary Software nor the Services related to Proprietary Software hereunder shall be considered "work for hire" within the meaning of Federal copyright law (17 U.S.C. Section 101 et seq). The City shall not disassemble, decompile or reverse engineer the Proprietary Software and any information obtained in violation of this provision shall be deemed confidential information owned exclusively by the Contractor. Contingent upon applicable payment to Contractor of amounts due for Proprietary Software, the City shall upon acceptance be granted a paid-up, perpetual, non-exclusive, royalty-free, not transferable operating license in source code form to install, store,

load, execute and display (collectively, "Use") the Proprietary Software for the City's internal use on all central processing units used or controlled by the OEMC. Irrespective of the number of central processing units owned or controlled by the City upon which the Licensed Software is used by the City will pay one "License Fee" for each application of Licensed Software its licenses, as set forth in the respective Task Orders. The City may make one (1) archival copy for back-up purposes. Except as set forth in this Agreement, the license will be for operations use only and does not authorize the City to make any alterations, adaptations, translations or derivative works to such Software without approval of Contractor. Licensing terms for Commercial Software shall be subject to the terms of the provider of such Commercial Software. Nothing herein shall prevent the City from access to and manipulation of the Commercial Software consistent with the licensing provisions for such Commercial Software. As a precondition of acceptance of any software, Contractor warrants that no license provided to the City pursuant to this Agreement violates any third party intellectual property rights in any way. Upon execution of this Agreement, the City and the Contractor shall enter into a Source Code Escrow Agreement (in substantially the form attached hereto as Exhibit 11), which provides that the Contractor shall promptly deposit into trust with a mutually acceptable escrow agent, one copy of the Source Code for each component of the Proprietary Software and any associated documentation pertaining to the Proprietary Software, as the City may reasonably require to configure, install and support the Proprietary Software. The Source Code Escrow Agreement provides that the City may access the Source Code and associated documentation from the escrow agent upon, among other things, the discontinuance of the Proprietary Software by the Contractor, bankruptcy of Contractor or upon failure or inability of the Contractor to perform its maintenance and technical services under this Agreement. The Source Code Escrow Agreement also sets out the obligations of the Contractor and the escrow agent to periodically update and maintain the currency of the Source Code and associated documentation held in escrow. Contractor shall pay the reasonable costs of the Escrow Agent. In the event of termination of this Agreement by the City because of Contractor's default under Section 9.1, the City shall have access to Source Codes for the Proprietary Software and be entitled to alter, adjust, translate or create derivative works from such Proprietary Software as needed solely for the City's own use in support of the operations of the CAD System.

The City will not allow any person or entity to have access to the Proprietary Software except employees of the City who need to have access to the Proprietary Software for purposes for which such Proprietary Software is licensed. In the event of improper access or disclosure or breach of the license, Contractor as its sole remedies against the City shall be entitled to seek temporary or permanent injunctive relief or damages at law.

(b)　　To the extent permitted by law, Work Product which is not covered in paragraph (a) above is conclusively deemed a "work made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the City will be the copyright owner of such Work Product and of all aspects, elements and components of the Work Product in which copyright can subsist.

(c)　　If requested by the City, Contractor will provide or cause to be provided any updates, enhancements or modifications to Software for a period of one (1) year after acceptance of such Software, Contractor shall and shall cause its Subcontractor(s) to promptly provide any updates or enhancements to licensed Software promptly after such updates and enhancements first became available in accordance with this provision. For a period of one (1) year after acceptance, Contractor shall cause its Subcontractor(s) to promptly provide any updates or enhancements to the technical documentation, source codes, file layouts and module programs to the escrow agent as provided in paragraph (a) promptly upon such first becoming

available. Contractor shall further provide or cause to be provided a notification of the probable effect on the CAD System if installation of any upgrade or enhancement occurs, and of its recommendations to the City as to whether or not any such upgrade or enhancement should be installed. Such update and enhancements shall exclude custom software designed exclusively for use by a specific third party other than the City of Chicago.

3.17   Records and Audits

(a)   **Records**

(i)   Contractor must promptly deliver or cause to be delivered to the City all documents relating to this Agreement and all Work Product in accordance with the time limits prescribed in the Monthly Report, and if no time limit is specified, then upon reasonable demand for them or upon termination or expiration of this Agreement or completion of the Services and delivery of all Equipment and Software. In the event of the failure by Contractor to make such delivery upon demand, then and in that event, Contractor must pay to the City any damages the City may sustain by reason of Contractor's failure: provided that Contractor shall not be liable for consequential damages resulting from such failure, but provided further that no limitation of liability shall apply to any duty to indemnify the City pursuant to Section 3.14 or to any breach subject to the consequential damages under Section 3.18. Contractor shall also institute system Configuration Management ("CM") to ensure proper version control at all levels of the CAD System functionality. Notation as to the procedures to be taken within the Configuration Management program for introduction of new Equipment and/or Software will be included in the Monthly Reports.

(ii)   Contractor must maintain for a period of five 5 years after the final payment made in connection with this Agreement any records relating to this Agreement, including Work Product not delivered to the City or demanded by the City. Contractor must not dispose of documents relating to this 5 year Agreement following the expiration of this period without notification of and written approval from the City in accordance with Article 5, 11 and 12.

(b)   **Audits**

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

(i)   If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then 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;

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

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

3.18   Confidentiality

(a)   All Work Product prepared or assembled by the Contractor under this Agreement and all information about the safety and security of the existing CAD System and the S9-1-1 System and facilities shall be deemed to be highly confidential information and, except as specifically authorized in this Agreement or as may be required by law, Contractor shall not allow the Work Product or such other confidential information (including but not limited to call volume statistics or events generated or events dispatched to) to be made available to any other individual or organization without the written consent of the City. For breach of such confidentiality requirements pertaining to software codes the City shall further be entitled to consequential damages. Further, all documents and other information provided to Contractor by the City are confidential and are deemed to be Confidential Information and must not be made available to any other individual or organization without the written consent of the City. The Contractor must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions contained in this Agreement. The Contractor shall use at least the same standard of care in the protection of Confidential Information as it uses to protect its own highly confidential or proprietary information. Contractor shall use the confidential information only in connection with the purposes of this Agreement. Except as otherwise required by the terms of this Agreement for any reason, all Confidential Information disclosed to Contractor and all copies thereof made by Contractor shall be returned to the City or, at the City's option, erased or destroyed. The Contractor will provide to the City certificates evidencing such destruction.

(b)   The Contractor must not issue any press releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Executive Director.

Contractor and its employees, agents and representatives will not, without City's prior written consent in each instance, use in advertising, publicity or otherwise the name of City or any City affiliate, or any officer or employee of City, or any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by City or its affiliates, or represent, directly or indirectly, that any product or service provided by Contractor has been approved or endorsed by City, or refer to the existence of this Agreement in press releases, advertising or materials distributed to prospective customers. This Section 3.18(b) will survive termination of this Agreement.

(c)   If the Contractor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in the Contractor's possession by reason of this Agreement, the Contractor must immediately give notice to the Executive

Director and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. The Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(d)   The provisions of this Section 3.18 shall not apply if the Confidential Information was (i) developed by Contractor independently as shown by its written business records regularly kept, (ii) rightfully obtained by Contractor without restriction from a third party, (iii) publicly available other than through fault or negligence of Contractor, or (iv) released by City without restriction to anyone.

(e)   Confidentiality of Contractor Information. In the event Contractor has highly confidential and proprietary information that Contractor is obligated to submit under the terms of this Agreement, Contractor shall provide the Executive Director with reasonable, written notice of such confidential information and shall mark such information as "confidential" and the City shall make every reasonable effort to maintain its confidentiality unless the City is prohibited from doing so by law. If the City is obligated by law to release such information, the City will provide Contractor with notice thereof so that Contractor may contest any such release.

3.19   Assignments and Subcontracts

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

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

Contractor, upon entering into any agreement with a Subcontractor, must furnish the Chief Procurement Officer and the Executive Director with a copy of its agreement with such Subcontractor. All subcontracts must contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provided that Contractor shall incorporate into all subcontracts all terms and conditions of this Agreement applicable to Subcontractors. All Subcontractors are subject to the approval of the Executive Director and the Chief Procurement Officer. The Subcontractors listed in Contractor's Proposal are hereby approved by the City.

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

The City expressly reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor.

3.20 Emergency Telephone System Act "Agency"

In providing the Services, Contractor shall be deemed an "agent" of the City solely for the purposes of the protection provided in Section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1) against liability for claims by the general public for civil damages in connection with the development and design of the System, but for no other purposes; provided, however that this agency does not extend to any willful or wanton misconduct on the part of the Contractor. The agency relationship described above is expressly limited as set forth above and there is no other agency relationship between the City and Contractor, express or implied. Nothing in this Agreement shall limit the contractual rights and remedies of the respective parties hereto under this Agreement or as otherwise provided by law. Nothing in this Agreement shall be interpreted, construed or regarded as creating any third party beneficiary rights, either express or implied. Moreover, nothing in this paragraph or in this Agreement shall be interpreted, construed or regarded as rendering the City liable or responsible or creating any duty, obligation or liability whatsoever to any Subcontractor, subconsultant, laborers or materialmen.

ARTICLE 4. TERMS OF PERFORMANCE

4.1 Term of Performance

This Agreement takes effect as of June ___, 2003 ("Effective Date") and continues until June __, _____ or until the Agreement is terminated in accordance with its terms, whichever occurs first. This Agreement may be extended for _____.

4.2 Timeliness of Performance

Contractor must perform in accordance with the time limits for Services required under Monthly Scope Statements and outstanding Task Orders. Time is of the essence with regard to the performance of Services.

4.3 Right of Entry

A. Access

Contractor, and any of its officers, employees, Subcontractors, subconsultants or agents, shall have a right to enter upon any City facility in connection with the performance of the Services, subject to the terms and conditions herein. The Contractor may be required to, and if so required shall, wear identifying badges while on site at any City Facility. Contractor shall comply with all security measures required by the City, including reasonable limitations on access and restrictions on times of entrance.

B. Care of City Property

Contractor shall use, and shall cause each of its officers, employees, subcontractors, and agents to use all reasonable care when entering upon any property owned or leased by the City. Contractor shall comply and shall cause each of its officers, employees, subconsultants and agents to comply with any and all instructions and requirements for the use of such property.

4.4 Personnel

(a) <u>Qualifications of Personnel</u>. Contractor shall, and shall cause the Subcontractors to assign and maintain throughout the completion of all Services an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as reasonably needed and qualified to perform all the terms of this Agreement. Personnel, whether full time or part time, shall be invoiced to the City only for actual time spent productively working on the Services. The level of staffing may be revised from time to time by notice in writing from Contractor to City with written consent of the City. If the City fails to object to the revision within 14 days after receiving the notice, then the revision will be deemed accepted by the City.

(b) <u>Key Personnel</u>. Contractor shall include among its staff such key personnel and positions as identified in Exhibit 5 attached and incorporated herein by reference ("Key Personnel"). The Key Personnel shall include Contractor's Services Manager, who shall be primarily responsible for the implementation of the Services under the Agreement. Until termination of this Agreement, Contractor's Services Manager shall devote his full business time and efforts to Supervising the Services. If any Key Personnel furnished by Contractor for Services in accordance with this paragraph above should be unable to continue in the performance of assigned duties for reasons due to termination of employment or illness, Contractor shall promptly, so as to cause no delay in Services, furnish to the City the name, qualifications and references of the available person proposed to substitute for the individual unable to continue, together with any other information the City may reasonably require to judge the experience and competence of the substitute person. Upon approval by the City, which approval shall not be unreasonably withheld or delayed, such substitute person shall be assigned to the Services. If the City requests the opportunity to consider additional candidates to substitute, Contractor shall promptly provide names, qualifications and references for additional qualified candidates. Such process shall be repeated for a reasonable period until a proposed replacement has been approved by the City. Changes in the assignment of Key Personnel due to commitments not related to this Agreement are prohibited without prior written approval of the Executive Director, which shall not be unreasonably withheld or delayed.

(c) <u>Claims by Employees</u>. Contractor shall indemnify the City from any claims or litigation brought by Contractor's Personnel arising from this Section 4.3 which result from a removal for cause.

(d) <u>Removal by City</u>. In addition to Section 4.4(c) above in the event that, in the opinion of the City reasonably exercised, the performance of personnel of Contractor assigned to the Services is not required or is at an unacceptable professional level, the City shall provide written notice thereof, with specific deficiencies noted, if applicable, and such personnel shall cease to be assigned to Services. Contractor shall be entitled to an adjustment to an extension of time (subject to the terms of Article XII) as a direct result of such removal so any removal shall materially affect Contractor's completion

of the work in accordance with the schedule set forth in the applicable Task Order. If Contractor can successfully demonstrate to the City that its performance has been adversely affected so as to significantly impact the schedule under a Task Order, such affect shall be deemed to be "material"). Contractor shall furnish promptly to the City, the name of a substitute person or persons unless a replacement is not required in accordance with this Section 4.4(c)(i) above. The City shall not be liable for costs arising from a removal for cause but shall reimburse reasonable and documented costs in the event City removal is determined not to be for cause as finally adjudicated. Any disputes as to removal for cause shall go to disputes resolutions.

(e) Acts or Omissions of Personnel. Contractor shall be responsible to the City for the acts, errors, and omissions of its employees, agents, and Subcontractors and each of their agents and employees.

(f) Salaries and Wages. Contractor must pay all salaries and wages due all employees and subcontractors performing under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement, contract underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Vendor, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Contractor to the respective employees to whom they are due. The parties acknowledge that this Section 4.4(f) is solely for the benefit of the City and that it does not grant any third part beneficiary rights.

(g) Additional Provisions Relating To Personnel. Contractor shall comply with the provisions relating to the work week, work schedules, Overtime, standby and all other provisions set forth in Exhibit 10 attached hereto and incorporated by this reference as if set forth herein. The City will comply with all applicable laws regarding payment for Overtime.

4.5 Schedule, Excusable Events of Delay and Extensions

(a) Commencement of Work. Contractor shall commence work on the Services immediately on the Effective Date of this Agreement and shall proceed continuously and diligently and use all reasonable efforts to complete the Services under this Agreement and each Task Order by the dates required in the Task Order as may be amended specifically by Change Order subject to Excusable Events of Delay.

(b) Notice of Delay. In the event that the work of Contractor is delayed as set forth in a Schedule, a Task Order or this Agreement, or delay appears imminent in the reasonable judgment of Contractor's Service Manager, Contractor shall notify City (by telephone or otherwise) upon Contractor's reasonable recognition or notice of such delay, which shall be confirmed within five (5) Business Days. The written notice shall include a description of the reasons for the delay and the steps Contractor is taking or will take to mitigate the effects of the delay on the completion of the Agreement and/or Task Order. Contractor shall, within five (5) Business Days after Contractor's reasonable recognition of the delay, notify the City, in writing, of the cause of the delay. Such notification shall (a) state the cause of the delay, (b) identify any anticipated impact of the delay on the critical path of Contractor's schedule as previously outlined and specified in the Monthly Reports, (c) state the number of days Contractor expects to be

delayed, (d) state whether Contractor intends to request an extension based on such delay, and (e) if the delay affects a Task Order element subject to hourly payment set forth in a budget variance as to how it may effect costs. If the cause of the delay is continuing, only one claim is necessary, but Contractor shall report, in writing, the termination of the cause for the delay within ten (10) Business Days after such termination. Compliance with this paragraph is a condition precedent to receipt of an extension. In the event of a failure to comply, Contractor shall not be entitled to an extension of time.

(c)   Excusable Events of Delay. An extension to a Task Order schedule shall be granted only to the extent that, a delay in completion has been caused by an "Excusable Event of Delay" and Contractor timely complies with Section 4.5(b). The City may issue a Change Order in accordance with Section 3.3 to adjust the schedule for a Task Order in the event Contractor's performance is materially affected by an Excusable Event of Delay. The following events of delay shall constitute "Excusable Events of Delay" when caused by: (i) the negligence or default of the City as set forth in this Agreement; (ii) changes of laws or federal regulations after the execution of this Agreement, if applicable; (iii) acts of the public enemy, (iv) fires not resulting from equipment or materials improperly utilized or provided by Contractor or any of its Subcontractors, (v) extended unanticipated bad weather, floods, earthquakes, tornadoes, epidemics, quarantine restrictions, or freight embargoes; (vi) strikes or labor disputes, and (vii) any other events, whether similar or dissimilar to the above beyond the reasonable control of the party effected, except as set forth in this Agreement to the contrary; provided, that any such causes set forth in this Section 4.5(c) were not foreseeable, did not result from the negligence or willful misconduct of Contractor or its Subcontractors, and provided, further, that Contractor has taken reasonable precautions to prevent further delays owing to such causes. An Excusable Event of Delay shall not constitute a Default.

(d)   Disputes Involving Delay. Any disputes over the number of days, if any, that Contractor has been delayed may be resolved at the option of either party in accordance with the dispute resolution provisions of Article 6 below.

(e)   Mitigation to Meet Milestones. Contractor shall perform and shall cause to be performed the Services in accordance with the Schedules set forth in this Agreement and any applicable Task Orders and as outlined and set forth in Monthly Reports and Monthly Scope Statements. If, in the City's reasonable judgment, it appears that Contractor will not meet any individual milestone or completion date because of an inexcusable event of delay, City shall have the right (but not the obligation) to demand that Contractor prepare within seven (7) Business Days of such demand, for City's approval, a written action plan for meeting the milestone date(s), including such overtime as may be reasonably required. Such plan will be prepared in such reasonable detail as City may request and shall be revised as necessary to obtain City's approval, which will not be unreasonably withheld.

ARTICLE 5.   COMPENSATION

5.1   Basis of Payment

(a)   For Task Orders in which Contractor is providing Equipment, the milestone payment schedule is set forth, as follows, except to the extent specifically provided for otherwise in such Task Order:

Equipment and Commercial Software

60% Upon delivery of and successful installation (including start up) of all Equipment and Commercial Software in such Task Order

40% Upon final acceptance of all Equipment and Commercial Software in a Task Order

(b)   For Task Orders for Proprietary Software and related Services in which the Contractor is providing Proprietary Software and/or Services, the milestone payment schedule is set forth, as follows, except to the extent specifically provided for otherwise in such Task Order:

Proprietary Software and Services

20% Upon delivery of functional specification description

20% Upon City approval of functional specification description

20% Upon successful installation of Proprietary Software

10% Upon completion of training

30% Upon Final Acceptance of the Proprietary Software

(f)   The Contractor will provide to the City the Technical Support and Maintenance Program and the City shall pay to Contractor, on a fixed price basis for Preventive Maintenance and the PRC Management Service and on a time and materials basis for the third party charges pursuant to Exhibit 8, not to exceed $_____. Travel costs shall be subject to current City policies regarding travel reimbursement.

(g)   [The City may order Additional Services related to the improvement or upgrade of the CAD System through Additional Task Orders and the City shall pay to the Contractor an amount not to exceed $5,000,000 per calendar year during this Agreement for such Additional Services.] NOTE: I believe this paragraph should be deleted. See comments under the definitions for Additional Services and Additional Task Orders.

5.2   Method of Payment

The invoices submitted by the Contractor will be in such format and detail as mutually agreed between the parties. The Contractor will submit monthly invoices (in triplicate) to the City for Services performed and Equipment and Commercial Software accepted in the intervals set forth in the particular Task Order. The Contractor must submit an invoice for the Software (except Commercial Software) upon receipt of the City's Acceptance Notice. The invoices must be in such detail as the City requests. Except in cases of disputes, the City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services and Work Product provided under this Agreement and any subsequent Task Order and make payment within 90 days.

Freight, handling and shipping costs are not to be invoiced. Federal Excise Tax does not apply to materials purchased by the City of Chicago by virtue of Exemption Certificate No. 36-6005820 and State of Illinois Sales Tax does not apply by virtue of Exemption Certificate No. E9998-1874-01. Illinois Retailers' Occupation Tax, Use Tax and Municipal Retailers' Occupation Tax do not apply to materials or services purchased by the City by virtue of statute. The prices invoiced shall include all other Federal and/or State, direct and/or indirect taxes which apply.

5.3   Funding

The sources of funds for payments under this Agreement are Fund number _____ and Fund Number _____ and are subject to appropriation and availability of funds therein. Payments under this Agreement (including all Task Orders) shall not exceed $_____without a written amendment in accordance with Section 10.3.

5.4   Non-Appropriation

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

ARTICLE 6. DISPUTES

Except as otherwise provided in this Agreement, the Contractor and the City must bring any dispute concerning a question of fact arising under this Agreement which is not disposed of to the Chief Procurement Officer for decision based upon written submissions of the parties. The Chief Procurement Officer will reduce his decision to writing and mail or otherwise furnish a copy of it to the Contractor within sixty (60) days of submission of the dispute.

The decision of the Chief Procurement Officer is final and binding. The Contractor must receive the Chief Procurement Officer's final decision pursuant to the Article 6 as a condition precedent to filing an appeal of the decision to the Circuit Court of Cook County or any other court.

ARTICLE 7. COMPLIANCE WITH ALL LAWS

7.1   Compliance with all Laws Generally

(a)   Contractor must observe and comply with, and pay all taxes and obtain all licenses, certificates and other authorizations required by, all applicable Federal, state, county and municipal laws, statutes, ordinances and executive orders, including those set forth in this Article 7. Contractor must require all Subcontractors to do the same. Further, Contractor must execute and must cause any Subcontractors to

execute, a Disclosure Affidavit (including disclosure of retained parties) in the form attached to this Agreement as Exhibit 2.

(b)   Notwithstanding anything in this Agreement to the contrary, references to a statute or law are deemed to be a reference to (i) the statute or law as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law, and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(c)   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.

(d)   Contractor, acting in good faith, may rely upon the written representations of its Subcontractors regarding their status as to the provisions set forth in this Article 7.

7.2   Nondiscrimination

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

(i)   Federal Requirements

In performing its Services under this Agreement, 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. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); 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 statutes, 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. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(b)   Subcontractors

Contractor must incorporate all of the above provisions, 7.2(a)(i), 7.2(a) (ii) and 7.2(a) (iii), in all agreements entered into with any and all suppliers of materials, furnishers 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.

7.3   Inspector General

It is the duty of Contractor, all Subcontractors, and every applicant for certification of eligibility for a City Contract or program, and all officers, directors, agents partners, and employees of Contractor, Subcontractors or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Chicago Municipal Code. The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago. All subcontracts must inform Subcontractors of the provision of this Section 7.3 and require that each Subcontractor understand and comply with it.

7.4   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, 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 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.

ARTICLE 8. SPECIAL CONDITIONS

8.1 Warranties and Representations

(a)   In connection with signing and carrying out this Agreement, Contractor:

(i)   warrants that Contractor is appropriately licensed under Illinois law to perform the Services for which an Illinois license is required and will perform no Services for which a professional license is required by law and for which Contractor is not appropriately licensed; and

(ii)   warrants it is financially solvent; it and each of its employees, agents, and Subcontractors of any tier are competent to perform the Services required under this Agreement; and Contractor is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement; and

(iii)   warrants that it will not knowingly subcontract any of the Services to any ineligible Subcontractor; and

(iv)   warrants that Contractor and its Subcontractors are not in default on any contract awarded by the City at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been in default on any contract awarded by the City of Chicago; and

(v)   warrants that it understands that nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; the Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement and outstanding Task Orders; and

(vi)   warrants that Equipment and Software supplied or caused to be supplied by Contractor will be new and of good quality and free of defects and in conformity with this Agreement and or any subsequent applicable Task Order. During the one year warranty period following Final Acceptance of the Equipment and/or Software covered in a Task Order ("Task Order Warranty Period"), upon notice from the City, Contractor will supply, repair or replace or reperform at its own cost such Equipment, Software, Deliverables or Services which are deficient or which fail to perform in accordance with the functionality standards agreed by the parties in such Task Order (which may be the manufacturer's specifications, or under this agreement, and remove any failed or deficient Equipment or Software or Deliverables from City facilities. Following notice by the City of a warranty claim as provided above, in the event that Contractor does not

commence and diligently continue to resolve the deficiency, the City shall have other remedies as are available under this Agreement. Contractor's obligations hereunder shall survive termination of this Agreement; and

(vii)   represents and warrants that the CAD System during and after installation of the Products will continue to function at or above the Performance Standards noted in Section 3.6 in the technical environment provided by City, including, but not limited to, mainframes, minicomputers, personal computers, peripherals, utilities and operating environments; and

(viii)   warrants that all Equipment, Software, Work Products and Services provided solely by Contractor or its Subcontractors and incorporated into the City's CAD System as part of any Task Order will be year 2000 compatible and will not materially adversely affect the functionality of the S9-1-1 System or the functionality of the CAD System; and

(ix)   represents that Contractor and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1; and

(x)   acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination.

(b)   Contractor represents and warrants that:

(i)   it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and

(ii)   it has all the requisite power and authority to execute, deliver, and perform its obligations under this Agreement, and

(iii)   it is duly licensed, authorized, or qualified to do business in and is in good standing in Illinois, and

(iv)   the execution, delivery, and performance of this Agreement has been duly authorized by Contractor.

(c)   Contractor shall provide copies to the City of all warranties of its Subcontractors as to new Equipment and any available warranty extensions as to new components or elements of CAD System, including without limitation all materials, equipment, systems, Equipment and Software for the City to retain on file for its records. The cost of all such warranties and warranty extensions provided hereunder are included in the cost to the City set forth in the Task Order. Contractor shall exert every commercially reasonable effort to include in all Subcontracts a warranty, which provides that such Subcontractor's Warranty period shall be extended as to such item or equipment, to the first anniversary date of such replacement. Contractor shall bear all responsibilities with regard to enforcing such Subcontractors warranties and warranty extensions during a warranty period. This

paragraph (c) is not a limit on and is subject to Contractor's warranties set forth in Section 8.1(a). Contractor shall assign to the City all Subcontractor warranties for Products, not later than the first anniversary of Final Acceptance of a Task Order, any Subcontractor's warranties as to Products within such Task Order which extend beyond such first anniversary of the corresponding Contractor's warranty.

(d)   During any Warranty Period, Contractor shall provide to the City monthly a warranty/repair service report detailing any corrected problems and ongoing problems, including the steps planned or taken by Contractor to resolve prior or ongoing problems and recommendations regarding any actions the City should take. This warranty/repair service report should be included in the Monthly Report covering the period of time during which such problems or actions were taken.

(e)   Contractor represents that if it becomes aware of the existence of any event that may void any warranty provided hereunder, whether such event is precipitated by Contractor, the City, or others, it will advise the Executive Director and the Corporation Counsel's office for the City of Chicago in writing promptly upon obtaining such knowledge. Upon the City's receipt of Contractor's written notification, Contractor shall have time to cure any problem that may result in cancellation of a warranty and over which Contractor or its Subcontractors may have any influence.

8.2   Ethics

(a)   In addition to the foregoing 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 pursuant to be the Municipal Code of Chicago (Chapter 2-156).

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

(b)   Contractor further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable by the City.

(c)   Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of Section 2-156-030(b) by any elected official with respect to this contract shall be grounds for termination of this contract.** For purposes of this order, the term business relationship shall be defined as set forth in Section 2-156-080 of the Municipal Code of Chicago.

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

8.3   Business Documents

At the request of the City, Contractor must provide copies of its latest Articles of Incorporation and by-laws, and evidence of its authority to do business in the State of Illinois, including registrations of assumed names and certifications of good standing with the Office of the Secretary of State of Illinois, and any other information reasonably requested by the City.

8.4   Conflicts of Interest

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

(b)   Without limiting the foregoing, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor, or joint venturer, during the term of this Agreement or afterwards in the preparation of any proposal or bid where the Consulting Parties perform any work for the City in recommending, researching, preparing, drafting, or issuing a request for proposals or bid specifications, or reviewing proposals or bids.

(c)   It is not permitted that Contractor and any assignee or subcontractor of the Contractor enter into any agreement, either individually or through an entity in which it has a controlling interest, with the City where Contractor and any assignee or subcontractor of the Contractor performed services for the City, such as (but not limited to) feasibility studies or analyses, on any project that is the subject of this Agreement. Contractor and any assignee or subcontractor of the Contractor further covenants that, in the performance of this Agreement no person having any such conflicting interest will be assigned to perform any services or have access to any confidential information. If the City, by the Executive Director in his

reasonable judgment, determines in writing that any of Contractor's work for others conflict in any material fashion with the Services Contractor is to render for the City under this Agreement, Contractor must terminate such other work immediately upon request of the City.

8.5 Non-liability of Public Officials

Neither Contractor nor any permitted assignee or Subcontractor of the Contractor shall charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any of them personally liable under any term or provision of this Agreement, or because of the City's execution or attempted execution, or because of any breach of this Agreement.

ARTICLE 9. TERMINATION

9.1 Events of Default

(a)   The following shall constitute defaults by Contractor under this Agreement:

(i)   Failure to perform or cause to be performed any material term, covenant or obligation under this Agreement, including but not limited to failure of the Equipment and Software or any material component to meet the Performance Standards set forth in Section 3.6 and Exhibit 7 and the provisions concerning insurance and nondiscrimination; or

(ii)   Deliberate misrepresentation of or omission of any material fact in any certificate, statement, representation or warranty made by Contractor in this Agreement (including all Exhibits) or in any other document hereafter provided by Contractor pursuant to this Agreement; or

(iii)   Failure to promptly re-perform, or cause to be re-performed, within no later than sixty (60) days (or such shorter time as the Executive Director may determined in case of an emergency), Services that were not in compliance with this Agreement and was rejected by the City or to repair, or at the City's option replace, within a reasonable time any component of the CAD System that was rejected by the City; or

(iv)   Discontinuance of the Services for any reasons (other than non-payment in accordance with Section 5.2) within Contractor's reasonable control. The Services of the Subcontractors shall be deemed to be within the reasonable control of Contractor; or

(v)   Failure to submit when due any material Documentation required under this Agreement; or

(vi)   Failure to perform the Services or any material term, covenant or obligation under this Agreement as a result of insolvency, any act of bankruptcy, or assignment of assets for the benefit of creditors or resulting in a material non-conformance under

this Agreement or any Task Order; or

(vii) Failure to achieve acceptance of any Task Order within one hundred and twenty (120) days after the date such acceptance is scheduled, subject to Excusable Events of Delay set forth in Section 4.5; or

(viii) Willful or repeated failure to respond to Trouble Reports concerning service failures under this Agreement or any Task Order and to commence appropriate action to remedy same within two (2) hours, and to actually remedy the same within, twenty-four (24) hours of occurrence; or

(ix) Breach of the covenants, representatives and warranties relating to interface with the S9-1-1 System; or

(x) Contractor's default under any other agreement it may presently have or may enter into with the City during the life of this Agreement. Contractor acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other Agreements; or

(b) The following shall constitute default by the City under this Agreement:

(i) Failure by the City to make proper payment in accordance with Article 5 of this Agreement, after a passage of 30 days following written notice of default.

9.2 Procedure for City's Declaring Default

Where the Contractor fails to comply with the requirements of this Agreement or a Task Order, the Chief Procurement Officer will notify the Contractor in writing. The Contractor, after receipt of notice from the Chief Procurement Officer specifying the default, must remedy the default or commence diligent efforts to cure the default within five (5) Business Days if a critical fixture or function of the S-9-1-1 System is adversely affected or thirty (30) Business Days if in a non-critical area of the S-9-1-1 System is adversely affected ("Basic Cure Period"). Whether to declare an Event of Default under paragraph (a) of Section 9.1 is within the sole and reasonable discretion of the Chief Procurement Officer and neither that administrative decision nor the factual basis for it is subject to review or challenge under Article 6, provided, however, Contractor may seek judicial review of such declaration or any other matter as may arise under this Agreement in a court of competent jurisdiction and shall be entitled to seek remedies at law or in equity but shall not be entitled to seek specific performance (other than for payment due) or re-instatement through judicial review. Where the correction of the default cannot be completed by the Contractor within the Basic Cure Period, the Contractor shall not be deemed in breach of this Agreement if Contractor (i) commences the correction of the default within the Basic Cure Period; (ii) provides the City prior to the expiration of the Basic Cure Period with a schedule acceptable to the City for the correction of the default ("Extended Cure Period"); or (iii) completes the correction of the default in accordance with the Extended Cure Period. Written notification of the Event of Default, and any intention of the Chief Procurement Officer to terminate the Agreement or to exercise any other remedy or remedies hereunder, shall be provided to Contractor, if any, by the Chief Procurement Officer. The decision to declare an Event of Default under paragraph (a) of Section 9.1 or to terminate the Agreement thereunder or to exercise any other remedy or remedies thereunder shall be effective upon Contractor's receipt, as defined herein of such notice.

9.3 Remedies

Upon the giving of such notice of an Event of Default as provided herein (after expiration of either the Basic Cure Period or, if applicable, the Extended Cure Period), the City may invoke any or all of the following remedies:

(a) The right to terminate the Agreement in whole or in part as to any or all of the Services to be performed and to pursue enforcement of any remedies that the City may have at law or in equity.

(b) The right to specific performance, an injunction , or any other appropriate equitable remedy, as may be applicable.

(c) The right to withhold all or any part of Contractor's compensation for undelivered or unprovided Services hereunder.

(d) The right to deem Contractor non-responsive in future contracts to be awarded by the City.

(e) The right to money damages, including, direct, indirect and consequential damages.

(f) The right to take over and complete the performance as agent for Contractor, either directly or through others. Contractor has, in that event, the right to offset from the cost the amount it would have cost the City under the terms and conditions of this Agreement, had Contractor completed the Services. - (Review sentence)

(g) The right to access the Proprietary Software Source codes under the escrow agreement.

In the case of default by the City under Section 9.1(b), Contractor's remedies shall be limited to a suit for direct damages or equitable relief, but not allowing termination or rescission.

9.4 Aggregate Limitation on Contractor's Liability

In no event will the liability of Contractor to the City for any reason under this Agreement exceed **$200,000,000;** provided that this limitation does not apply to i) Contractor's indemnification obligations under Section 3.14, ii) losses, damages or other liabilities that result from Contractor's gross negligence, willful misconduct, fraud, or intentional breach of this Agreement or iii) losses of whatever nature, including damages, that are covered under Contractor's insurance policy required by this Agreement pursuant to <u>Section 3.13</u> or covered under insurance otherwise carried by Contractor. (A lot of money)

9.5 Miscellaneous

(a) If the City considers it to be in its best interests the aforementioned occurrences notwithstanding, it may elect not to declare default or to terminate the Agreement hereunder. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Contractor to continue to provide the Services despite one or more events of default, Contractor shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the City waive or

relinquish any of its rights.

(b)   The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair such right or power, nor shall it be construed as a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

9.6   Early Termination

(a) Open Termination. In addition to termination of this Agreement for default, the City may terminate this Agreement in whole or in part or all or any portion of any Task Order without further liability to Contractor except as set forth in this paragraph at any time by notice in writing from the City to Contractor when the continuation of such Task Order or the Agreement may be deemed to be no longer in the best interests of the City or if sufficient funds are not available to pay for the affected Services. Notice shall serve as a "Stop-Work Order" to Contractor, effective no sooner than thirty (30) days after the date of receipt of such notice in accordance with this Agreement. Contractor shall restrict its activities and those of Sub-contractors in winding down and demobilization during this thirty (30) day period. No costs relating to any Services so terminated incurred after the effective date of such termination shall be allowed except for reasonable costs for winding down and de-mobilization. Payment for any Services performed before the effective date of such termination shall be based upon a proration of the compensation set forth in this Agreement or the affected Services set forth in the applicable Task Order or Task Orders actually performed, or caused to be performed, by Contractor prior to the effective date of termination. No amount of compensation, however, is permitted for anticipated profits on unperformed work or Services. The City and Contractor must attempt to agree on the amount of compensation to be paid to Contractor, but if not agreed on, the dispute must be settled in accordance with Article 6 of this Agreement. And any payment so made to Contractor shall be in full settlement for all Services satisfactorily performed under this Agreement.

(b)   Alternate Remedy. If the City's election to terminate this Agreement for default is determined in a court of competent jurisdiction, as finally adjudicated, to have been wrongful, then in that case the termination shall be deemed to be an open termination pursuant to Section 9.6(a).

9.7   Right to Cover

(a)   In the event of Contractor's abandonment of any Task Order or Contractor's repeated material breaches of the Agreement or **"epidemic failure"** of the Products or the CAD System as a result of a deficiency in the Products in relating to the CAD System, the City, in the exercise of reasonable judgment terminates the Agreement, the City has the right to "cover." For purposes of this Agreement cover shall mean the re-procurement from alternate suppliers of substitutes for the Services not provided by or discontinued by Contractor. The purchase of substitutes for Services must be made in good faith. In the event the City exercises its right to cover as described above, Contractor will be liable to pay the City within 60 days of invoice the commercially reasonable cost of the Services to cover in excess of the price the City would have paid to Contractor for the re-procured Services. In the event Contractor disputes the City's invoice for cover, the matter shall be referred to the dispute resolution procedure contained in Article 6. "Epidemic Failure" shall mean that during the first calendar year following acceptance of the latest to occur

of the acceptance of the Windows NT Task Order, the CAD System Enhancement Task Order or the Replacement and Integration of Mobile Workstation Hardware Task Order, the CAD System's availability for use (as defined in Section 3.6) is less than 99.5% for three or more 30 day periods.

(b)   Any costs incurred by the City in the exercise of its right to cover under Section 9.6 (a) (including the cover of Proprietary Software), and any damages and/or out-of-pocket expenses incurred by the City in correcting breaches of Confidentiality by Contractor may be offset against any amounts due for Services completed prior to the termination or the exercise of any remedies; provided, however, that sixty (60) days prior notice to the City's intent to exercise such offset shall be given to Contractor in writing. Notwithstanding the foregoing, no such offsets shall be effectuated by the City should Contractor exercise its rights in writing during said sixty (60) day notice period to seek dispute resolution under Article 6 and, in such event, until and unless such dispute resolution procedures shall have concluded and the findings shall have been in favor of the City. If such offsets are insufficient to cover such costs, Contractor shall promptly remit to the City amounts equal to the remaining amounts owed the City which have not been offset, upon written demand therefor. Offsets under this Section 9.6(b) shall only be applied to amounts owed by the City to Contractor pursuant to this Agreement.

9.8   Suspension

The City may at any time request that Contractor and its Subcontractors suspend work under this Agreement or any Task Order, or any part thereof, by the City giving then (10) Business Days prior written notice to Contractor. No costs incurred after the effective date of such suspension shall be allowed, except for reasonable costs incurred for winding down on demobilization. Contractor shall and it shall direct its Subcontractors to promptly resume performance under the Agreement or any Task Order under the same terms and conditions as stated herein upon written notice by the City to Contractor and such equitable extension of time as may be mutually agreed upon by the City and Contractor shall be granted when necessary for the completion of the Agreement or a Task Order. And any additional expenses actually incurred (including, but not limited to, restocking charges for Equipment upgraded at the City's request) by the Subcontractor as a result of such suspension due to remobilization shall be treated as a change order of this Agreement. Contractor may terminate this Agreement if such suspension shall exceed a three (3) month period.

9.9   Offset, Anti-Scofflaw

(a)   In connection with performance under this Agreement, the City may offset any excess costs incurred by the City in the event of termination of this Agreement for default or otherwise resulting from Contractor's performance or non-performance under the Agreement or if the City exercises any of the remedies available to it under Section 9.3 and any credits due to or overpayments made by the City, by use of any payment due for Services completed before the termination for default or before the exercise of any remedies. If the amount offset is insufficient to cover those excess costs, Contractor is liable for and must properly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

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

due under the contract in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by the Contractor to the City. For purposes of this section, "outstanding parking violation complaint" means a parking ticket, notice of parking violation or parking violation complaint on which no payment has been made and all administrative appeals have been exhausted or the time for appeal has passed. "Debt" means a specified sum of money owed to the City for which the period granted for payment has expired.

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

(i)   the Contractor has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking complaints and/or debts owed to the City and the Contractor is in compliance with the agreement; or

(ii)   the Contractor is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or

(iii)   the Contractor has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

9.10   Living Wage

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

1.   if the Contractor has 25 or more full-time employees, and
2.   if at any time during the performance of the contract the Contractor and/or any subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then
3.   The Contractor must pay its Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "Base Wage") for all work performed pursuant to the Contract.

The Contractor's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the Contract term when the conditions set forth in 1 and 2 above are met, and will continue thereafter until the end of the Contract term.

Prior to January 1, 2003, the Base Wage is $7.60 per hour; beginning January 1, 2003, the Base Wage is $9.05 per hour. As of July 1, 2003, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four as published annually by the U.S.

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

The Contractor must include provisions in all subcontracts requiring its subcontractors to pay the Base Wage to Covered Employees. The Contractor agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by the Contractor or by a subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit the Contractor and/or subcontractors to verify compliance herewith. Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to three (3) years.

ARTICLE 10. GENERAL CONDITIONS

10.1   Entire Agreement

(a)   General

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises, or interpretations are implied or impressed upon this Agreement that are not expressly addressed in this Agreement. This agreement supersedes the Interim Agreement except to the extent noted herein.

(b)   No Collateral Inducements

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

(c)   No Omissions

The Contractor acknowledges that Contractor was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this

Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Contractor did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Contractor relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

10.2   Counterparts

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

10.3   Amendments

No changes, amendments, modifications, or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of the Contractor and by the Mayor, Comptroller, the Executive Director and Chief Procurement Officer of the City or their respective successors and assigns. The City incurs no liability for any out-of-scope services provided by Contractor without a written amendment to this Agreement pursuant to this Section.

If an Other Department wishes to purchase Special Services from Contractor, the City and the Contractor will negotiate and execute an amendment authorizing the purchase of Special Services ("Special Amendment").

Any Special Amendment will specify, at a minimum, the applicable Other Department, the increase in the maximum amount of annual Special Services permitted under this Agreement under Section 5.1(g), the fund number for such Special Services pursuant to Section 5.3 of this Agreement (if federal funds are to be used for Special Services, the OEMC and the Other Department must notify the Department of Law), and must be executed by all parties executing any other amendment as well as the authorized representative of the Other Department. Task Orders under Special Amendments will be deemed Additional Task Orders under this Agreement.

10.4   Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois without regard to conflict of laws provisions. In particular, except to the extent that the provisions of this Agreement are inconsistent therewith, this Agreement will be governed by the Uniform Commercial Code as enacted by the State of Illinois ("U.C.C."). To the extent that there are any services to be rendered in performance of the terms of this Agreement, such services will be deemed "goods" within the definition of the U.C.C.

Contractor irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Contractor may be made, at the option of the City, either by certified mail addressed to the applicable office as provided for in this Agreement, by certified mail addressed to the office actually maintained by Contractor, or by personal

delivery on any officer, or director of Contractor. If any action is brought by Contractor against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

10.5   Severability

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

10.6   Assigns

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

10.7   Cooperation

Contractor shall at all times cooperate fully with the City. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor shall fully cooperate with City to assure an orderly transition to another provider of the Services. Contractor shall effect an orderly demobilization of its own operations in connection with the Services and comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

The City shall provide Contractor with written notice upon soliciting another offer or entering negotiations with any other party regarding the provision of services similar to those contemplated by this Agreement.

10.8   Contract Documents

(a) In the event of any inconsistency or conflict between the terms and conditions of Articles 1 through 12 of this Agreement and the Exhibits of this Agreement, the Articles of this Agreement shall prevail. Any omissions within documents of higher precedence from documents of lower precedence shall not relieve Contractor from the responsibility of providing the item that was omitted unless such item omitted was previously and specifically approved by City and provided, however, the failure of any documents to reference a component or subcomponent specifically shall not in and of itself be considered a conflict or inconsistency. Where such document fails to include or is incomplete regarding a component or subcomponent that is necessary for the proper functioning of the CAD System as contemplated by this Agreement and any Task Orders, such component or subcomponents and related Services shall be deemed to be included in the documents unless such item omitted was agreed upon for omission by both parties. Amendments or modifications to any document forming part of this Agreement shall be subject to the same order of precedence as the document being amended or modified.

(b) Technical Specifications. In the event Contractor discovers an inconsistency or conflict in requirements for materials, quantities, quality or technical specifications, Contractor shall evaluate the inconsistent or conflicting items and shall determine and report to the City which item, or whether both inconsistent or conflicting items will satisfy the requirements contained in this Agreement and any Task Order, and shall further evaluate and compare the items to determine which item is more technologically superior, reliable, cost effective, available, serviceable and such other comparisons as may be appropriate. If either (both) of the two inconsistent or conflicting items will satisfy the requirements contained in this Agreement or any Task Order, then the City shall select between the two items on the basis of the evaluation prepared by Contractor. If City selects the more costly option and the option is not already included in this Agreement or any Task Order; the applicable Task Order shall be amended through a Change Order or if applicable under Section 3.11, in a Change Directive to incorporate such higher price, unless such change can be affected by Change Directive, provided, however, if the conflict or inconsistency was due to Contractor's or Subcontractor's error or omissions it will be addressed in accordance with this Agreement including without limitation the rework provisions contained in Section 3.6.

10.9   Joint and Several Liability

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

10.10   No Third Party Beneficiaries

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

10.11   Independent Contractor

The Contractor agrees that, notwithstanding anything in this Agreement to the contrary, it is acting as an independent contractor in performing under this Agreement and nothing herein is intended or should be construed as in any creating or establishing the relationship of partners or joint venturers between the City and the Contractor, or as constituting the Contractor or any officer, owner, employee or agent of the Contractor as an agent, representative or employee of the City for any purpose or in any manner whatsoever.

10.12   [Intentionally Omitted]

10.13   Most Favored Customer

For the complete period covered by this Agreement, Contractor must treat the City as its most favored customer. In according such treatment, Contractor must not reassign any staff assigned to City projects to other projects until such time as the City projects are satisfactorily completed. Contractor represents that the cumulative prices, terms, warranties and benefits granted by Contractor hereunder are comparable to or better than the equivalent terms being offered by it to any present customer of Contractor. If during the term of this Agreement Contractor enters into arrangements with another customer which, if

applicable to the City would provide the City with more favorable benefits and terms, Contractor must notify City within seven days of such more favorable benefit and terms and this Agreement will thereupon be deemed amended to provide the same terms to the City.

10.14   No Waiver

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

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

10.15   Cooperation

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

10.16   Quiet Enjoyment

The City will be entitled to use of the Equipment, the Proprietary Software and the Commercial Software transferred pursuant to this Agreement without any disturbance, interference, interruption, lawsuit or claim concerning title to or right to use the Equipment, the Proprietary Software and the Commercial Software, subject only to its obligation to make payment as required by this Agreement. Contractor must not create or be a party to any disturbance, interference, interruption, lawsuit or claim, and must, in good faith, defend any such lawsuit or claim. In the event that City suffers any damage as a result of any such disturbance, interference, interruption, lawsuit or claim, Contractor must compensate City for all such damages.

EXHIBIT 1

CAD System Description

The operational environment of S-9-1-1 CAD System (prior to this Agreement) consists of a suite of

thirteen (13) computer servers commonly referred to as Police Computer Aided Dispatch (PCAD), Fire

Computer Aided Dispatch (FCAD), Communications Front-End Computer System (CFCS), Software

Support Computer System (SSCS), Police Management Information System (PMIS), Fire Management

Information System and Records Management System (FMIS), Data Systems Management Information

System (DMIS), Support Server, Training System servers, Primary Domain Controller (PDC), and Back-up

Domain Controller (BDC).

The identified servers are locally accessed from within the Chicago Emergency Communication

Center (CECC) by approximately one hundred twenty-one (121) Call Taker and Dispatcher intelligent

workstation clients, and remotely accessed by approximately four hundred seventy-nine (479) intelligent

workstations and alarm terminals from Police and Fire facilities dispersed throughout the geographical

boundaries of the City of Chicago. The above servers are comprised of Digital Equipment Corporation DEC

Alpha 2100, 4100, 7000, and 800 model hardware servers installed in the CECC. The local clients are

Digital Equipment Corporation Alpha 3000 systems. The remote clients are Digital Equipment Corporation

Computers, comprised of Pentium II & 333 MHZ based processors. The DEC servers and local clients

operate DEC Unix version 4.0 D Operating System, while the remote clients presently use the Windows NT

4.0 Operating Systems; for the detailed description of the CAD System is set forth below:

A.   Hardware:

There are a total of thirteen (13) servers, one hundred twenty-one local clients (DEC Alpha / 3000 Unix Call

Taker and Dispatch Workstations), and four hundred seventy-nine (479) remote clients which comprise the

Office of Emergency Communication's, Litton / PRC Altaris Computer Aided Dispatch System:

1.   PCAD; two Digital Equipment Corporation DEC Alpha 2100 servers, 375 MHZ Alpha 21064

processors (3), one gigabyte of RAM, SCSI 4.3 gigabyte internal disk drives (3), SCSI 4.3 gigabyte

shared external disk drives (5), Storage Works Arrays (2), 100 Mbps FDDI controller, Dual SCSI

fast-wide bus, MCU PCI-based memory to memory transfers, and external TZ89 tape drives.

2.   FCAD; two Digital Equipment Corporation DEC Alpha 2100 servers, 375 MHZ Alpha 21064

processors (3), one gigabyte of RAM, SCSI 4.3 gigabyte internal disk drive (3), kSCSI 4.3 gigabyte

shared external disk drives (4), Storage Works Arrays (2), 100 Mbps FDDI controller, Dual SCSI

fast-wide bus, MCU PCI-based memory to memory transfer.

3.   CFCS; two Digital Equipment Corporation DEC Alpha 2100 servers, 375 MHZ Alpha 21064

processors (3), one gigabyte of RAM, SCSI 4.3 gigabyte internal disk drives (3), SCSI 4.3 gigabyte

shared external disk drives (5), Storage Works Arrays (2), 100 Mbps FDDI controller, Dual SCSI

fast-wide bus, MCU PCI-based memory to memory transfers.

4.   SSCS; one Digital Equipment Corporation DEC Alpha 2100 server, 200 MHZ processor, 512

megabyte RAM, SCSI 2.1 gigabyte disk drives (5), 20 gigabyte TZ87-TA external tape drive, RAID

channel controller (3).

5.   PMIS; one Digital Equipment Corporation DEC Alpha 4100 server, 466 MHZ processors (2), 2.0

gigabytes RAM, 4 gigabyte internal bootable disk drive, Ethernet Controller, Dual ported FDDI Communications, 35/70 gigabyte five tape cartridge, RAID disk controller, 140 effective gigabytes of disk storage.

6.   FMIS; one Digital Equipment Corporation DEC Alpha 4100 server, 466 MHZ processors (2), 2.0 gigabytes RAM, 4 gigabytes internal bootable disk drive, Ethernet Controller, Dual proted FDDI Communications, 10/20 gigabytes five tape cartridge, RAID disk controller, 45 effective gigabytes of disk storage.

7.   DMIS; one Digital Equipment Corporation DEC Alpha 2100 server, 233 MHZ processor, 512 megabyte RAM, one SCSI 4.0 gigabyte of disk storage and eight SCSI 2.1 gigabytes disk storage, RAID channel controller (3).

8.   Support Server; one Digital Equipment Corporation, Intel based 100 MHZ processor, 32 megabytes of RAM, 2.2 gigabytes of internal hard drive disk storage, Ethernet 10 Base T controller and Network Interface Card.

9.   Training System (Host Name Train); one Digital Equipment Corporation DEC model 800 server; 400 MHZ processor, 512 megabytes RAM, 2.0 internal bootable disk drive, Ethernet controller, 4/8 gigabyte tape cartridge, 12 gigabytes of disk storage.

10.   Local Clients; one hundred eighteen Digital Equipment Corporation DEC Alpha 3000 / 300 servers, 175 MHZ processor, 128 megabyte RAM, SCSI 2.1 gigabyte disk storage, Turbo Channel Video

Card, and Keyboard Arbitrator.

11. CPD Remote Clients: Digital Equipment Corporation, Intel based 333 MHZ processors, 64 megabytes of RAM, 4.0 gigabytes internal hard drive disk storage, and Ethernet 10/100 Base T Network Interface Card.

12. ARS Remote Clients, Digital Equipment Corporation Intel based 333 MHZ processors, 64 megabytes of RAM, 4.0 gigabyte internal hard drive disk storage, and Ethernet 11/100 Base T Network Interface Card.

13. CFD Remote Clients Alarm Terminals; Digital Equipment Corporation, Intel based 333 MHZ Pentium processors, 64 megabytes of RAM, 4.0 gigabyte internal hard drive disk storage, Ethernet 10 Base T Network Interface Card, Labtech external speakers, 8 Channel Digital Output Relay I/F, and ELO touch screen with internal controller.

14. CFD Remote Clients; Digital Equipment Corporation, Intel based 333 MHZ Pentium processors, 64 megabytes of RAM, 4.0 megabytes internal hard drive disk storage, and Ethernet 10/100 Base T Network Interface Card.

B. SOFTWARE:

1. Altaris Computer Aided Dispatch server software, Communications Front-End Computer System server software, Police Management Information System (PMIS) server software, Fire Management Information System (FMIS) server software, Training System server software, Software Support

Computer System (SSCS) server software.

2. Oracle software suite:

    a. Oracle Server

    b. Oracle Developer

    c. Oracle Discover 2000

    d. Oracle Forms

    e. Oracle Reports

    f. CAD System associated Oracle support software, routines and utilities

3. Simple Network Management Protocol (SNMP):

    a. HP Open View Network Node manager

    b. 3COM Superstack II Enterprise Network

    c. 3COM Transcend LANsentry Manager

    d. Oracle Enterprise Manager

    e. Digital Clear VISN

4. Operating Systems:

    a. Digital Unix 4.D

    b. Microsoft Windows NT 4.D

5. Communications:

    a. Ethernet

b. TCP/IP

c. 3270 Emulation (X-Windows)

6. Automated Mapping Display System and Automatic Vehicle software

a. Star View

b. Trimble Navigation Software

7. Third Party Software:

a. MapInfo

b. Exceed

c. 3270 Terminal Emulation

d. Intersolv/ODBC driver

e. UniQ-Batch

f. Neuron Data

g. ESRI Arcview product suite

h. Locution