

Vendor No.	Vendor Name	Specification No.	Contract No.
		XXXXXX	

**DRAFT FOR COMMENT:**  
**Commodity/ Supply**



**CLICK AND TYPE CONTRACT TITLE**

**Contract Period: click and type duration**

**required for use by**

**THE CITY OF CHICAGO DEPARTMENT OF CLICK AND TYPE DEPARTMENT**

**issued by**

**CITY OF CHICAGO DEPARTMENT OF PROCUREMENT SERVICES**

**Room 403, City Hall, 121 North LaSalle Street, Chicago, Illinois 60602**

**Information: click and type name**

Phone: click and type number Fax: click and type number Email: click and type email

**Bidder inquiry deadline:** 4:00 pm Chicago time, click and type date. *Inquiries must be in writing.*

**Pre-Bid Conference:** none or click and type date and time.

**Bid Opening Date: click and type date**

**Bid Opening Time:** 11:00 am Chicago time

**Bid Opening Location:** City of Chicago Department of Procurement Services  
 Bid and Bond Room  
 City Hall, Room 301  
 121 N. LaSalle Street  
 Chicago, Illinois 60602

**Execute and submit one (1) complete original bid package.**

All signatures to be sworn to before a Notary Public.

*Bids must be received in the City of Chicago Department of Procurement Services Bid and Bond Room no later than the date and time stated above. Bids will be read publicly. Bid package must be complete and returned in its entirety. Do not scan or recreate the bid package, the original must be used.*

*Bid must be submitted in sealed envelope(s) or package(s). The outside of the envelope or package must clearly indicate the name of the project, "Click And Type Name," the specification number, click and type number, and the time and date specified for receipt. The name and address of the Bidder must also be clearly printed on the outside of the envelope(s) or package(s).*

Bid Deposit: click and type amount or "none" Performance Bond: yes or no

Drawings: none or number Exhibits: none or number

Funding Source: CLICK AND TYPE FEDERAL OR NON-FEDERAL

Fund Number: click and type number

**Rahm Emanuel**  
**Mayor**

**Jamie L. Rhee**  
**Chief Procurement Officer**

*DRAFT FOR COMMENT*

**LEGAL ADVERTISEMENT NOTICE**

**INVITATION FOR BIDS**

Bids will be received by the Chief Procurement Officer of the City of Chicago for:

click and type project name, number, and brief description

in accordance with the Bid Documents.

Contract Negotiator	
Phone Number	
email address	

	Date and Time	Location
<b>Pre-Bid Conference</b>		
<b>Question Cut-Off</b>		email @cityofchicago.org*
<b>Bids are Due</b>		Bid and Bond Room, 301 City Hall

\*All questions or requests for clarification regarding this bid solicitation and any of the Contract Documents must be submitted via email and MUST include the Specification Number in the subject line of your e-mail. Emails received after the Question Cut-Off will not be answered except at the discretion of the Chief Procurement Officer.

**Participation Goals (local funds):**

MBE Goal: \_\_\_%      WBE Goal: \_\_\_%

**If Federal Funds:**

DBE Goal: \_\_\_%

**SUBMIT ONE (1) COMPLETE ORIGINAL COPY OF THE EXECUTED BID DOCUMENT**

<b>Bid Fee</b>	
<b>Bid Deposit</b>	

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Bids must be submitted in sealed envelope(s) or package(s). The outside of the envelope or package must clearly indicate the name of the project, “\_\_\_\_\_”, the Specification Number \_\_\_\_\_ and the time and the date specified for receipt. The name and the address of the Bidder(s) must be clearly printed on the outside of the envelope(s) or package(s).

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**BID SUBMITTAL CHECKLIST**

**Missing information, bonds, and/or documents may invalidate your bid.**

To help ensure that you are submitting a complete bid, place an "X" next to each item below after completing and incorporating the item into your bid package. Or write "N/A" if that item does not apply to your bid.

1. \_\_\_\_\_ Bid Proposal Page(s)
2. \_\_\_\_\_ Schedule of Prices (if applicable)
3. \_\_\_\_\_ Corresponding Bid/Proposal Execution Page
4. \_\_\_\_\_ Certificate of Filing of Economic Disclosure Statement and Affidavit and Appendix A (or complete EDS if unable to file on-line)
5. \_\_\_\_\_ City of Chicago Insurance Certificate of Coverage
6. \_\_\_\_\_ Affidavit of Uncompleted Work (construction contracts only)
7. \_\_\_\_\_ Contractor's Statement of Uncompleted Work (construction contracts only)
8. \_\_\_\_\_ Affidavit of Chicago Business
9. \_\_\_\_\_ Schedule B – Affidavit of Joint Venture (MBE/WBE/DBE) only if bidder is a joint venture
10. \_\_\_\_\_ Schedule C-1: Letter(s) of Intent from MBE/WBE/DBE to Perform as Sub-contractor, Supplier and/or Consultant.
11. \_\_\_\_\_ Schedule D-1: Affidavit of MBE/WBE/DBE Goal Implementation Plan or waiver request
12. \_\_\_\_\_ Bid Fee (if required)
13. \_\_\_\_\_ Bid Deposit (if required)

**NOTE:** Each page requiring a signature must be signed by the person with proper authority and sworn before a Notary Public where noted.

Each Bidder/Proposer must acknowledge the receipt of a full set of Bid/Contract Documents and any and all addenda at the top of the Proposal Execution Page.

**ATTACHMENTS/FORMS COMPRISING BID DOCUMENTS**

- This Invitation for Bids and Requirements for Bidding and Instructions to Bidders
- Standard Terms and Conditions
- Special Conditions
- Supplemental Special Conditions (if any)

*DRAFT FOR COMMENT*

- Insurance Requirements and sample form of certificate
- Special Conditions Regarding MBE/WBE/DBE, and associated attachments
- Detailed Specifications and Bid Proposal Pages
- Plans and Drawings (if applicable)
- Addenda (if any)

**REQUIREMENTS FOR BIDDING AND INSTRUCTIONS TO BIDDERS**

Read this document carefully before preparing your bid.

**PART I – FROM BID ADVERTISEMENT TO BID OPENING**

**1. The Bid Documents**

The Bid Documents include this Invitation for Bids, Legal Advertisement Notice, Bid Proposal Pages, Requirements for Bidding and Instructions for Bidders, Standard Terms and Conditions, Special Conditions, Supplemental Special Conditions (if any), Detailed Specifications, Plans and Drawings (if any), Insurance Requirements, and all other exhibits attached hereto, and any and all clarifications and addenda issued by the City. Upon the award and execution of a contract pursuant to the Bid Documents, the Bid Documents become the Contract Documents.

**2. Obtaining the Bid Documents**

Printed copies of Bid Documents are available for pickup from:

The Department of Procurement Services (“DPS”)  
Bid and Bond Room  
Room 301 City Hall  
121 North LaSalle Street  
Chicago, IL 60602

Fax # 312-744-5611  
Phone # 312-744-9773

Plans and Drawings may only be available on CD.

Bidders that download the Bid Documents must make sure to register as a Bid Document holder by (i) faxing the company’s name, contact person, address, e-mail address, telephone number and fax number to the Bid and Bond Room or (ii) by calling the Bid and Bond Room in order to receive clarifications or addenda to the Bid Documents.

**Bidders are solely responsible for obtaining all Bid Documents, including Clarifications and Addenda**

In the event of a conflict or inconsistency between the Bid Documents obtained on-line and the printed Bid Documents available from the Bid and Bond Room, the terms and conditions of the printed Bid Documents will prevail.

Documents may be downloaded from the DPS’ website at the following URL:

[www.cityofchicago.org/bids](http://www.cityofchicago.org/bids)

**Downloadable Bid Documents**

Bidders that download Bid Documents from the City of Chicago’s website instead of obtaining the hard copy paper Bid Documents from the City of Chicago’s Bid and Bond Room, are responsible for checking the City of Chicago’s website for clarifications and/or addenda. The City will not be responsible for a bidder’s failure to consider additional information contained therein in preparing its bid. Further, failure to obtain clarifications and/or addenda from the City’s website and acknowledge them in the Bid Documents when submitting the bid will render the bid non-responsive. Any harm to the bidder resulting from such failure to obtain all

necessary documents will not be valid grounds for a protest against award(s) made under this bid solicitation.

Note: Multiple clarifications and/or addenda may be issued by the City. Bidders are strongly encouraged to notify the Department of Procurement Services, Bid and Bond Room at 312-744-9773 that they are preparing a bid by faxing a copy of a business card (include e-mail address, Specification No. and bid title/description) at 312-744-5611 to register your company as a Bid Document holder and receive notice of clarifications and addenda.

### **3. Clarifications and Addenda**

Clarifications and addenda to the Bid Documents will be posted at the website listed above, and made available at the Bid and Bond Room. There may be multiple clarifications and addenda. Failure to obtain clarifications and/or addenda will not relieve a Bidder from the obligation to bid according to and comply with any changed or additional terms and conditions contained in the clarifications and addenda.

### **4. Document Deposit**

The initial set of Bid Documents is provided to a Bidder at no cost. The Bidder must deposit \_\_\_\_\_ for each additional set of Bid Documents. The document deposit must be paid in the form of a certified check, cashier's check, or money order. The deposit may be refunded upon return of the Bid Documents, in good condition, within ten (10) days of the Bid opening. Failure to return the Bid Documents in a timely manner will result in the forfeiture of the document deposit.

### **5. Examination of the Bid Documents and Work Site**

Bidders are required to carefully examine all of the Bid Documents before completing the forms and submitting a Bid. Bidders are also required to inspect the site of the Work to be performed, and familiarize itself with the conditions at the site that will affect the Work. A Bidder that is awarded a contract will be solely responsible for all costs arising from and associated with that Bidder's (i) failure to comply with the requirements of the Bid Documents, including, without limitation, this requirement to inspect the Bid Documents and site of the Work, and (ii) failure to include any costs or expense attributable to site conditions that could have reasonably been discovered through a site inspection or examination of the Bid Documents.

### **6. Pre-Bid Conference and Site Visit**

A pre-bid conference will be held to answer questions regarding these Bid Documents. Attendance is strongly encouraged. The Chief Procurement Officer or his/her representative, as well as representatives from the City Department for which the Bid Documents have been issued will comprise the panel to respond to Bidders' questions.

The pre-bid conference will be held on **click and insert date and time** at **click and insert location**, as stated in the Advertisement for Bids.

Bidders must familiarize themselves with the locations for contract performance required by the Bid Documents and take into account all relevant conditions when preparing its Bid. The contractor will not be paid additional compensation due to failure to account for conditions that may be observed by a site visit in its bid.

The site for the Work is/is not accessible to the public during normal business hours. [If the site is not accessible, insert instructions for obtaining access, including date and time for guided visits, if any].

## **7. Questions Regarding the Bid Documents or Procurement Process**

All inquiries regarding this solicitation and the Bid Documents must be directed to the Contract Negotiator at the email address listed on the Invitation for Bids.

Bidders may only rely on written answers in an addendum duly issued by the Chief Procurement Officer. Bidders cannot rely on oral or informal responses; such answers will not be binding upon the City.

Any clarifications or addenda will be faxed, e-mailed, delivered, or mailed to registered Bid Document holders. Failure on the part of a prospective bidder to receive a written interpretation prior to the time of the opening of bids will not be grounds for withdrawal of its bid. **Bidders must acknowledge receipt of each addendum issued in the space provided on the proposal page or its bid will be rejected.**

Questions received after the deadline will be answered only at the discretion of the CPO.

**The deadline for questions for this bid is:** [click and type date and time.](#)

## **8. Exceptions**

Any deviations from the specifications must be noted on the Proposal Page or pages attached thereto, with the exact nature of the change outlined in sufficient detail. Bidder must provide the reason for which deviations were made. Failure of a bidder to comply with the terms of this paragraph may be cause for rejection of its bid.

If a bidder takes exception to other provisions of the specification, the Chief Procurement Officer shall reject the bid as non-responsive in the event that the Chief Procurement, in his or her sole opinion, determines such exception(s) to be material exception(s).

## **9. Taxes**

Materials purchased by the City of Chicago are not subject to the Federal Excise Tax. The City's Tax Exemption Certificate number is 36-6005820.

Materials purchased by the City of Chicago are not subject to the State of Illinois Sales Tax. The City's Tax Exemption Certificate number is E9998-1874-07.

The Illinois Retailers' Occupation Tax, Use Tax, and Municipal Retailers' Occupation Tax do not apply to materials or services purchased by the City of Chicago.

Bidders shall include all other applicable Federal, State and local taxes, direct or indirect, in their Bid prices.

## **10. Completion of the Bid Documents**

Each Bidder must complete all of the forms listed on the Bid Submittal Checklist. The forms, including the Bid Proposal Pages, must be completed in ink, or typewritten. Bidders may not change any of the Bid Documents. Any changes made by a Bidder to the Bid Documents may result in rejection of the Bid, and will not be binding upon the City.



Bidders must use the Bid Proposal Page that is appropriate for their form of business organization (e.g., sole proprietorship, corporation, partnership, or joint venture). The individual(s) that sign the Bid Execution Page on behalf of the Bidder, by their signature, represents and warrants to the City that such individual is authorized to execute bids and contracts on behalf of the Bidder, and that the Bidder agrees and shall be bound to all of the terms and conditions of the Bid Documents and, upon execution by the City, the Contract Documents. Signatures must be sworn before a Notary Public.

## **11. Required Forms**

### **a. Certificate of Filing for online EDS**

Bidders must complete an online EDS prior to the bid due date. A Bidder who does not file an electronic EDS prior to the bid due date may be found non-responsive and its bid rejected. If you are unable to complete the EDS online and print a Certificate of Filing prior to the response due date, the City will accept a paper EDS provided written justification is provided explaining the Bidders good faith efforts to complete it before the response due date and the reasons why it could not be completed. Refer to the Instructions for Completing Economic Disclosure Statement and Affidavit On-Line.

### **b. MBE/WBE Program**

The goals for MBE and WBE participation are set forth in the Invitation for Bids. The rules, regulations, and forms for achieving these goals are set forth in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment (“M/WBE Special Conditions”).

If after making good faith efforts, the Bidder is unable to provide a plan for the utilization of MBE and WBE firms that will achieve compliance with the goals, the Bidder must, as required by the Special Conditions, submit a request for whole or partial waiver of the goals with its Bid. Any waiver request must include documentation as required by the M/WBE Special Conditions, including, but not limited to, notification to an assist agency.

#### **i. Schedule B: Affidavit of Joint Venture (if applicable)**

Complete and submit this form if a non-certified firm has formed a joint venture with one or more MBE/WBE certified firms to submit a Bid. Such Affidavit should be signed by the appropriate Joint Venture members and notarized.

#### **ii. Schedule C-1**

Include a completed Letter of Intent from each certified MBE or WBE that will perform as a Subcontractor, Supplier and/or Consultant. Such letter(s) must be signed and notarized.

#### **iii. Schedule D-1**

Include the Bidder’s Affidavit of MBE/WBE Goal Implementation Plan. This Affidavit must be signed and notarized.

### **c. Contractor’s Statement of Experience and Financial Condition (construction contracts only)**

Bidders must either have a current “Contractor’s Statement of Experience and Financial Condition” on file with the Department of Procurement Services, or submit such Statement with its Bid. If the Bidder is a joint

venture, each member of the joint venture must have a Statement on file, or submit such Statement with the Bid.

**d. Affidavit of Uncompleted Work (construction contracts only)**

- i. Each Bidder must submit an Affidavit of Uncompleted Work with its Bid. The Bidder's Affidavit of Uncompleted Work must list all uncompleted contracts, whether the Bidder is a prime contractor or subcontractor on those contracts.

**12. Bid Deposit**

Bid deposits may be in the form of a bond, certified check, cashier's check or money order payable to the City of Chicago. Bid bonds must be in the form provided by the Department of Procurement Services, and must be executed by a surety licensed and authorized to do business in the State of Illinois.

The Chief Procurement Officer may return bid deposits sooner, but reserves the right to hold all bid deposits until a contract has been awarded or, in the case of multiple awards, all contracts have been awarded for the Bid in question.

**13. Trade Names and Substitutions**

Reference to a specific manufacturer or trade name in this solicitation is intended to be descriptive (but not restrictive) and to indicate to prospective bidders those product(s) that have been deemed by the City to be satisfactory. The bidder must, if awarded the Contract, provide the product(s) specified, unless equivalent alternatives have been proposed as described below and found acceptable to the City.

A bidder that chooses to respond to this solicitation for bids with alternate product(s) from those specified in the solicitation, must identify such alternate items with its bid with a detailed explanation and documentation in support of how the alternate items proposed by the bidder can perform as well as or better than those specified. Unless an alternate item is so identified, it is understood that the Bidder proposes, and will be required to provide, the specific item described in the specifications. No substitution of specified items will be allowed thereafter except as otherwise provided for in the specifications.

Documentation in support of alternate items includes:

1. Complete data substantiating compliance of proposed alternate items with requirements stated in the solicitation, including:
  - (a) Product identification, including manufacturer's name and address.
  - (b) Manufacturer's literature identifying:
    - i) Product description
    - ii) Reference standards
    - iii) Performance and test data
  - (c) Samples, as applicable
  - (d) Name and address of similar projects on which the product has been used, and date of usage.

2. Itemized comparison of the proposed alternate item with product or service specified; listing significant variations.

A bidder warrants and represents that in making a formal request for substitution with alternate items that:

1. The proposed alternate item is equivalent to or superior in all respects to the product specified,
2. The same warranties and guarantees will be provided for the alternate item as for the product specified.

The CPO may, in his or her sole discretion, accept an alternate item for a specified item, provided the alternate item so bid is, in the CPO's sole opinion, the equivalent of the item specified in the solicitation. An alternate item that the CPO determines not to be equivalent to the specified item shall render the bid non-responsive and the CPO shall reject the bid.

#### **14. Authorized Dealer/Distributor**

For bids involving the furnishing of equipment or other goods that are subject to manufacturer warranties that require sale or installation by authorized dealers or distributors, the Contractor must be the manufacturer or an authorized dealer/distributor of the proposed manufacturer and be capable of providing genuine parts, assemblies and/or accessories as supplied by the manufacturer. Further, the Contractor must be capable of furnishing original product warranty and manufacturers related services such as product information, product re-call notices, etc. The Bid Documents will typically ask the bidder to certify that it is an authorized dealer/distributor when this requirement is applicable. The bidder's compliance with these requirements will be determined by the CPO, whose decision will be binding.

#### **15. Submission of Bids**

##### **a. Date, Time, and Place**

Bids are to be delivered to the Bid and Bond Room of the Department of Procurement Services, City Hall Room 301, 121 North LaSalle Street, Chicago, Illinois 60601 on the date and prior to the time stated on the Invitation for Bids, or any addendum issued by the City to change such date and/or time. No bid will be accepted after the date and time specified.

##### **b. Bids Must Be Sealed and Properly Labeled**

All Bids must be submitted in sealed envelopes. The Department of Procurement Services provides official bid enclosure envelopes at the Bid and Bond Room. Use of the official envelopes is not required, but it is preferred

All envelopes containing Bids must be marked "Bid Enclosed," and must have the Bidder's name and address, the Specification Number, and the advertised date of bid and date of bid opening stated on the envelope. Failure to properly mark the envelope may result in a failed delivery, and result in rejection of the Bid. If more than one envelope is needed to submit the Bid, each envelope must be marked with all the information required above and be marked to indicate that the envelopes belong together (e.g., one of three, two of three).

**c. Bidders Are Responsible for Bid Delivery**

Each Bidder is solely and completely responsible for delivery of its Bid to the Bid and Bond Room before the date and time established for the Bid opening. Any Bid that is not delivered on time, including Bids mistakenly delivered to other City offices, will not be accepted. The City is under no obligation to ensure that misdirected Bids are delivered to the Bid and Bond Room prior to Bid opening.

**16. Withdrawal of Bids**

Bidders may withdraw their Bid at any time prior to the date and time for Bid opening. Requests for withdrawal must be made in writing on the Bidder's letterhead. Bidders must make their own arrangements for the return of their Bids.

Bidder shall not withdraw or cancel or modify its Bid for a period of ninety (90) calendar days after said advertised closing time for the receipt of Bid Proposals. The City reserves the right to withhold and deposit, as liquidated damages, the bid deposit of any bidder requesting withdrawal, cancellation or modification of its Proposal prior to the ninety (90) day period for acceptance of Proposal.

**PART II – FROM BID OPENING THROUGH AWARD OF CONTRACT**

**1. Bid Opening**

Bids will be opened and read publicly in the Bid and Bond Room by the Department of Procurement Services immediately after the deadline for the submission of Bids has passed. Announcement of the Bids and the apparent low Bidder are neither final nor binding. All Bids and Bid Documents are subject to review by the Department of Procurement Services to determine the lowest responsive and responsible bidder and whether a contract will be awarded.

**2. Effective Term of Bid**

Unless a Bid is expressly rejected by the Chief Procurement Officer, all Bids will remain in effect for ninety (90) days subsequent to the Bid opening. The City may request that Bidders extend the effective period of their Bids. Such requests shall be in writing, and will require the Bidders' written consent to the extension.

**3. Evaluation of Bids**

**a. Determination of Responsiveness**

DPS will review Bids to determine whether they conform to the requirements of the Bid Documents.

**i. Mathematical Calculations**

The Chief Procurement Officer reserves the right to make corrections, after receiving the bids, to any clerical error apparent on the face of the bid, including but not limited to obviously incorrect units or misplaced decimal points, or arithmetic errors. The Bidder must bid all Line Items set forth on the Bid Proposal Pages, except to the extent that the Specification expressly allows otherwise. In the event that comparison of the Bidder's "Unit Price" and "Total Price" submitted for any line item reveals a calculation error, the Unit Price will prevail.

**ii. Unbalanced bids**

The Chief Procurement Officer reserves the right to reject any Bid that, in his or her sole discretion and authority, determines is materially unbalanced.

**iii. Cash Billing Terms**

Cash billing discounts offered will not be considered in the evaluation of bids.

**b. Determination of Responsibility**

The determination of the responsibility of a Bidder is within the sole discretion and authority of the Chief Procurement Officer.

The Chief Procurement Officer may request any Bidder to submit such additional information pertaining to the Bidder's responsibility as the Chief Procurement Officer deems necessary. Failure to comply with any such request will result in a finding of non-responsibility and rejection of the Bid.

**i. Bidder Debts or Defaults**

The Chief Procurement Officer reserves the right to refuse to award a Contract to any bidder that is in arrears or is in default to the City upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the City, or has failed to perform faithfully any previous contract with the City.

**ii. Competency of Bidder**

The bidder, if requested, must present within a reasonable time, as determined by the Chief Procurement Officer, evidence satisfactory to the Chief Procurement Officer of ability to perform the Contract and possession of necessary facilities, pecuniary resources and adequate insurance to comply with the terms of these specifications and contract documents.

**4. Rejection of Bids and Waiver of Informalities**

The Chief Procurement Officer, in his/her sole discretion and authority, may determine that it is in the best interest of the City to reject any or all Bids submitted in response to any Invitation for Bids. The Chief Procurement Officer, in his/her sole discretion and authority, may disregard or waive any informality in the Bids or bidding process.

**5. Statutory Adjustments to the Bid**

**a. Chicago Business Preference**

The Chief Procurement Officer shall accept the lowest responsive Bid from a responsible Chicago Bidder, provided that the Bid does not exceed the lowest responsive Bid from a responsible non-Chicago Bidder by more than two percent (2%).

For purposes of this provision, a “Chicago Business” is an entity which: (1) has meaningful, day-to-day business operations at a location(s) within the corporate limits of the City of Chicago; (2) reports to the Internal Revenue Service such location(s) as the place(s) of employment for the majority of its regular, full-time work force; (3) holds appropriate City of Chicago business license(s) (if such license(s) are required for the business); and (4) is subject to applicable City of Chicago taxes. City of Chicago taxes include, but are not limited to, employer’s expense tax pursuant to Section 3-20-030 of the Municipal Code (if the business has fifty or more employees). Any entity desiring the Chicago Business designation must submit, at the time of bid, a completed, signed and notarized Affidavit of Chicago Business in the form that is included in this bid document as Section 13 (“Affidavit”). Failure to submit a properly completed Affidavit at the time of bid will result in the entity not being considered for the Chicago Business designation. The Chief Procurement Officer reserves the right to investigate and verify any information submitted in an Affidavit but is under no obligation to do so. The Chief Procurement Officer’s determination as to whether an entity qualifies for designation as a Chicago Business shall be final.

If a bidder is a joint venture, partnership or other business combination consisting of more than one entity (collectively, “joint venture”), and all entities comprising the joint venture (collectively, “members”) are designated Chicago Businesses in accordance with the above paragraph, the joint venture will be deemed to be a Chicago Business. Where not all joint venture members are Chicago Businesses, such joint venture will be considered a Chicago Business only if Chicago Business members hold at least a fifty percent (50%) interest in the joint venture. Chicago Business members have a fifty percent (50%) interest in the joint venture only if the Chicago Business member(s) directly hold(s) a fifty percent ownership interest in the joint venture and either: (A) the Chicago Business member(s) directly employ(s) fifty percent or more of the workforce performing the duties that the joint venture will self-perform, including but not limited to management of the joint venture itself, or (B) the Chicago Business member(s), as direct subcontractor(s) to the joint venture, perform(s) work or services equal to fifty percent or more of the

amount of the bid. Joint venture bidders whose members are NOT all Chicago Businesses must submit with their bids a copy of the signed joint venture agreement, copies any subcontracts with the Chicago Business members, and such other information as they deem relevant and necessary to establish their eligibility for the Chicago Business designation in accordance with this paragraph. Failure to submit such information at the time of bid will result in the joint venture not being considered for the Chicago Business designation. The Chief Procurement Officer reserves the right to investigate and verify any information submitted by a joint venture bidder but is under no obligation to do so. The Chief Procurement Officer's determination as to whether a joint venture qualifies for designation as a Chicago Business shall be final.

**b. Child Support Arrearage**

Pursuant to Section 2-92-415 of the Municipal Code of Chicago, an eight percent (8%) penalty will be applied to the Bids of Bidders whose substantial owners, as defined in the Code, are in arrears on court-ordered child support payments and who have not entered into an agreement for payment or are otherwise not in compliance with the order. The penalty will pertain to the Bid only, and will not affect the Contract Price or payments under the Contract.

**c. MacBride Principles Ordinance**

If the Bidder conducts any business operations in Northern Ireland, it is hereby required that the Bidder will make reasonable and good faith efforts to conduct those operations in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 and Section 2-92-580 of the Municipal Code to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland

Bidders who take exception to the provision set forth above will be assessed an eight percent (8%) penalty on their Bids. The penalty will pertain to the Bid only, and will not affect the Contract Price or payments under the Contract.

**d. Apprentice Utilization (construction contracts only)**

Pursuant to Section 2-92-355 of the Municipal Code of Chicago, a bid incentive is available for Bidders on any construction project having an estimated value of \$100,000 or more, where not otherwise prohibited by federal, state or local law. The bid incentive consists of "earned credits" based on the amount of labor performed on eligible contracts by apprentices, as defined in Section 2-92-355. If a Bidder has such "earned credits" and wishes to apply them to its Bid, a copy of the Bidder's "Earned Credit Certificate" must be attached to the Bid.

**e. Business Enterprises owned by People with Disabilities ("BEPD") (construction contracts only)**

Pursuant to Section 2-92-337 of the Municipal Code of Chicago, the Chief Procurement Officer shall award a bid incentive to a Bidder for utilization of a BEPD as a prime or subcontractor. The bid incentive shall be earned in the performance of the Contract, and shall be applied on a future contract.

*Percentage of total dollar contract*

*Amount performed by BEPD*

*Bid incentive*

2 to 5%

0.5% of the contract base bid

6 to 10%

1.0% of the contract base bid

11% or more

2.0% of the contract base bid

If a Bidder has such “earned credits” and wishes to apply them to its Bid, a copy of the Bidder’s “Earned Credit Certificate” must be attached to the Bid.

**6. Basis of Award**

Any contract(s) awarded pursuant to the Invitation for Bids will be awarded to the lowest responsive and responsible Bidder(s), as determined by the canvassing formula set forth in the Bid Proposal Pages of the Bid Documents and the statutorily-mandated adjustments to the Bid set forth herein.

**7. Consideration of Bids**

The CPO represents and acts for the City in all matters pertaining to this invitation for bids and any contract subsequently awarded. The CPO reserves the right to reject any and all bids and to disregard any informalities in a bid or the bidding process, when in his/her opinion the best interest of the City will be served by such action.

**8. Bid Protests**

The bidder shall submit any protests or claims regarding this solicitation to the office of the City’s Chief Procurement Officer located at City Hall, 121 North LaSalle Street, Room 403, Chicago, Illinois 60602. A pre-bid protest must be filed no later than the five days before the bid opening date, a pre-award protest must be filed no later than ten days after the bid opening date, and a post-award protest must be filed no later than ten days after the award of the contract.

All protests or claims must set forth the name and address of the protester, the specification number, the grounds for the protest or claim, and the course of action that the protesting party desires that the CPO undertake.

Copies of the Bid Protest Procedures are available at the Bid and Bond room and on DPS’ website.

**9. Award of Contract**

**a. Notice of Award**

The Department of Procurement Services will, by letter, notify the Bidder that is, per the Basis of Award, the lowest responsive and responsible Bidder of the City’s intent to award a Contract to Bidder. This notice of contract award will remind the Bidder of its submittal obligations that must be met prior to actual award of the Contract.

**b. The Contract**

The Contract consists of the Bid Documents. Upon the award and execution of a contract pursuant to the Bid Documents, the Bid Documents become the Contract Documents, which collectively comprise the Contract.



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## **1. STANDARD TERMS AND CONDITIONS**

### **1.1. General Provisions**

#### **1.1.1. Definitions**

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

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

**“Bid”** is an offer made by a Bidder in response to an invitation for bids which includes a binding proposal to perform the Contract which the City may rely on and accept.

**“Bidder”** is a person, firm, or entity submitting a Bid in response to an invitation for bids. Once the Contract is awarded the Contractor shall assume that all references to a Bidder and such attendant obligations apply to the Contractor.

**“Bid Opening Date”** is the date and time publicly advertised by the Chief Procurement Officer as the deadline for submission of Bids.

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

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

**“Calendar Day”** means all calendar days in accordance with the world-wide accepted calendar.

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

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

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

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

**“Contract”** means, upon notice of award from the CPO, the contract consisting of all Bid Documents relating to a specific invitation for bids, and all amendments,

modifications, or revisions made from time to time in accordance with the terms thereof. All such documents comprising the Contract are referred to as the "Contract Documents".

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

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

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

**"Force Majeure Event"** means an event beyond the reasonable control of a party to this Contract, which is limited to acts of God, explosion, acts of the public enemy, fires, floods, earthquakes, tornadoes, epidemics, quarantine restrictions, work stoppages not caused or unmitigated by the Contractor.

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

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

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

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

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

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

### **1.1.2. Interpretation of Contract**

#### **1.1.2.1. Order of Precedence**

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

- Addenda, if any
- Detailed Specifications
- Plans or drawings, if any
- Special Conditions
- Supplemental Special Conditions, if any
- Standard Terms and Conditions

- Invitation to bid and proposal pages

**1.1.2.2. Interpretation and Rules**

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

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

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

**1.1.2.3. Severability**

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

**1.1.2.4. Entire Contract**

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

**1.1.3. Subcontracting and Assignment**

**1.1.3.1. No Assignment of Contract**

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

**1.1.3.2. Subcontracts**

- A. No part of the goods, work, or services to be provided under this Contract may be subcontracted without the prior written consent of the CPO; but in no case will such consent relieve the Contractor from its obligations, or change the terms of the Contract. The Contractor must notify the CPO of the names of all Subcontractors to be used and shall not employ any that the

CPO has not approved. Prior to proposing the use of a certain Subcontractor, the Contractor must verify that neither the Subcontractor nor any of its owners is debarred from or otherwise ineligible to participate on City contracts. This information can be found on the City's website:

[http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp/svcs/debarred\\_firms\\_list.html](http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp/svcs/debarred_firms_list.html)

- B. Subcontracting of the services or work or any portion of the Contract without the prior written consent of the CPO is null and void. Further, the Contractor will not make any substitution of a previously approved Subcontractor without the prior written consent of the CPO; any substitution of a Subcontractor without the prior written consent of the CPO is null and void.
- C. The Contractor will only subcontract with competent and responsible Subcontractors. If, in the judgment of the Commissioner or the CPO, any Subcontractor is careless, incompetent, violates safety or security rules, obstructs the progress of the services or work, acts contrary to instructions, acts improperly, is not responsible, is unfit, is incompetent, violates any laws applicable to this Contract, or fails to follow the requirements of this Contract, then the Contractor will, immediately upon notice from the Commissioner or the CPO, discharge or otherwise remove such Subcontractor and propose an acceptable substitute for CPO approval.

**1.1.3.3. No Pledging or Assignment of Contract Funds Without City Approval**

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

**1.1.3.4. City's Right to Assign**

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

**1.1.3.5. Assigns**

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

**1.1.4. Contract Governance**

**1.1.4.1. Governing Law and Jurisdiction**

This Contract will be governed in accordance with the laws of the State of Illinois, without regard to choice of law principles. The Contractor hereby irrevocably submits, and will cause its Subcontractors to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way



concerning the execution or performance of this Contract and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. The Contractor irrevocably waives any objection (including without limitation any objection of the laying of venue or based on the grounds of forum non conveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Contract in the jurisdiction set forth above.

**1.1.4.2. Consent to Service of Process**

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

**1.1.4.3. Cooperation by Parties and between Contractors**

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

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

Each Contractor involved shall assume all liability, financial or otherwise, in connection with its contract, and shall protect and hold harmless the City from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Contractor because of the presence and operations of other contractors working within the limits of its work or Services. Each

Contractor shall assume all responsibility for all work not completed or accepted because of the presence and operations of other contractors.

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

**1.1.4.4. No Third Party Beneficiaries**

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

**1.1.4.5. Independent Contractor**

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

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

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

**1.1.4.6. Authority**

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

**1.1.4.7. Joint and Several Liability**

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

**1.1.4.8. Notices**

All communications and notices to the City from the Contractor must be faxed, delivered personally, electronically mailed or mailed first class, postage prepaid, to the Commissioner of the using Department that appears on the applicable Purchase Order, with a copy to the Chief Procurement Officer, Room 403, City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602.

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

All communications and notices from the City to the Contractor, unless otherwise provided for, will be faxed, delivered personally, electronically mailed or mailed first class, postage prepaid, to the Contractor care of the name and to the address listed on the Bid Documents' proposal page.

**1.1.4.9. Amendments**

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

**1.1.4.10. No Waiver of Legal Rights**

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

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

**1.1.4.11. Non-appropriation of Funds**

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

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

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

**1.1.4.12. Participation By Other Government Agencies**

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

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

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

**1.1.5. Confidentiality**

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

Contract, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner.

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

**1.1.6. Indemnity**

- A. Contractor must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses (as defined below), including those related to: injury, death or damage of or to any person or property; any infringement or violation of any property right (including any patent, trademark or copyright); failure to pay or perform or cause to be paid or performed Contractors covenants and obligations as and when required under this Contract or otherwise to pay or perform its obligations to any subcontractor; the City's exercise of its rights and remedies under this Contract; and injuries to or death of any employee of Contractor or any subcontractor under any workers compensation statute.
- B. "Losses" means, individually and collectively, liabilities of every kind, including monetary damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, fines, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Contractor, its employees, agents and subcontractors.
- C. At the City Corporation Counsel's option, Contractor must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Contractor of any of its obligations under this Contract. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.
- D. To the extent permissible by law, Contractor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due to third parties arising out of any Losses, including but not limited to any limitations on Contractor's liability with respect to a claim by any employee of Contractor arising under the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other

related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute.

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

#### **1.1.7. Contract Extension Option**

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

### **1.2. Compensation Provisions**

#### **1.2.1. Ordering, Invoices, and Payment**

##### **1.2.2.1. Purchase Orders**

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

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

##### **1.2.2.2. Invoices**

If required by the Detailed Specifications, original invoices must be sent by the Contractor to the Department to apply against the Contract. Invoices must be submitted in accordance with the mutually agreed upon time period with the Department. All invoices must be signed, dated and reference the City's Purchase Order number and Contract number. A signed work ticket, time sheets,

manufacturer's invoice, if applicable, or any documentation requested by the Commissioner must accompany each invoice. If a Contractor has more than one contract with the City, separate invoices must be prepared for each contract in lieu of combining items from different contracts under the same invoice. Invoice quantities, description of work, services or goods, unit of measure, pricing and/or catalog information must correspond to the items on the Proposal Pages of the Bid Documents. If invoicing Price List/Catalog items, indicate Price List/Catalog number, item number, Price List/Catalog date and Price List/Catalog page number on the invoice.

**1.2.2.3. Centralized Invoice Processing**

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

Invoices

City of Chicago, Office of the City Comptroller

33 N. LaSalle St., Room 700

Chicago, IL 60602

OR

Via email to: [invoices@cityofchicago.org](mailto:invoices@cityofchicago.org) with the word "INVOICE" in the subject line.

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

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

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

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

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

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

**1.2.2.4. Payment**

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

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

**1.2.2.5. Electronic Ordering and Invoices**

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

**1.2.2.6. City Right to Offset**

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



**1.2.2.7. Records**

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

**1.2.2.8. Audits**

**A. City's Right to Conduct Audits**

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

**B. Recovery for Over-Billing**

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

- If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then the Contractor must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;
- If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then Contractor must reimburse the City for the full cost of the audit and of each subsequent audit.
- Failure of Contractor to reimburse the City in accordance with the foregoing is an event of default under this Contract, and Contractor will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

**1.2.2. Prompt Payment to Subcontractors**

**1.2.2.1. Incorporation of Prompt Payment Language in Subcontracts**

Contractor must state the requirements of these Prompt Payment provisions in all Subcontracts and purchase orders. If Contractor fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this Section

are deemed to be incorporated in all Subcontracts and purchase orders. Contractor and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Contractor's participation and that of its Subcontractors on this Contract.

**1.2.2.2. Payment to Subcontractors Within Fourteen Days**

The Contractor must make payment to its Subcontractors within 14 days of receipt of payment from the City for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with the Contract Documents and provided the Contractor with all of the documents and information required of the Contractor. The Contractor may delay or postpone payment for a to a Subcontractor when the Subcontractor's work or materials do not comply with the requirements of the Contract Documents, the Contractor is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

**1.2.2.3. Direct Payment to Subcontractors By City**

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

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

**1.2.3. Subcontractor Payment Reports**

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

Once the Contractor has reported payments made to each Subcontractor, including zero dollar amount payments, the Subcontractor will receive an email and/or fax notification requesting that they log into the system and confirm payments received. All monthly confirmations must be reported on or before the twentieth (20<sup>th</sup>) day of each month. Contractor and Subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

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

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

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

If a Subcontractor has satisfactorily performed in accordance with the requirements of the Contract, Contractor must pay Subcontractor for such work, services, or materials within fourteen (14) calendar days of Contractor receiving payment from the City. Failure to comply with the foregoing will be deemed an event of default.

#### **1.2.4. General Price Reduction – Automatic Eligibility for General Price Reductions**

If at any time after the Bid Opening Date the Contractor makes a general reduction in the price of any goods, services or work covered by the Contract to its customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Contract for the duration of the contract period (or until the price is further reduced). Such price reduction will be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a general price reduction will mean any reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this Contract. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a general price reduction under this provision.

The Contractor must invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the General Price Reduction provision of the Contract.

The Contractor, in addition, must within 10 calendar days of any general price reduction notify the CPO of such reduction by letter. Failure to do so will be an event of default. Upon receipt of any such notice of a general price reduction all participating Departments will be duly notified by the CPO.

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

### **1.3. Compliance With All Laws**

#### **1.3.1. General**

Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, regulations, codes, ordinances and executive orders, in

effect now or later and as amended whether or not they appear in the Contract Documents.

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

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

### **1.3.2. Non-Discrimination**

#### **1.3.2.1. Federal Affirmative Action**

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

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

#### **1.3.2.2. Illinois Human Rights Act**

Contractor must comply with the Illinois Human Rights Act, 775ILCS 5/1-1 01 et seq., as amended and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 445 Ill. Admin. Code 750 Appendix A.

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

#### **1.3.2.3. Chicago Human Rights Ordinance MCC Ch. 2-160**

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

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

**1.3.2.4. Business Enterprises Owned by People With Disabilities (BEPD) MCC Sect. 2-92-586**

It is the policy of the City of Chicago that businesses certified as a BEPD in accordance with MCC Sect. 2-92-337 et seq., Regulations Governing Certification of BEPDs, and all other Regulations promulgated under the aforementioned sections of the MCC; shall have the full and fair opportunities to participate fully in the performance of this Contract.

Contractor shall not discriminate against any person or business on the basis of disability, and shall take affirmative actions to ensure BEPDs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

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

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

“Business Enterprises owned by People with Disabilities” or “BEPD” has the same meaning ascribed to it in MCC Sect. 2-92-586.

“Bid incentive” means an amount deducted, for bid evaluation purposes only, from the contract base bid in order to calculate the bid price to be used to evaluate the bid on a competitively bid contract.

“Construction project” has the same meaning ascribed to it in MCC Sect. 2-92-335.

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

“Contract base bid” means the total dollar amount a contractor bids on a contract without factoring any bid incentive or percentage reductions to the bid amount.

“Earned credit” means the amount of the bid incentive allocated to a contractor upon completion of a contract in which the contractor met or exceeded his or her goals for the utilization of BEPDs in the performance of the contract.

“Earned credit certificate” means a certificate issued by the Chief Procurement Officer evidencing the amount of earned credit a contractor has been awarded.

The CPO shall award a bid incentive to Contractor for utilization of a BEPD as a prime contractor or subcontractor in accordance with the provisions of this

section. The bid incentive shall be earned in the performance of the Contract, provided that the bid incentive earned in the performance of the Contract shall only be applied to a future contract.

Where not otherwise prohibited by federal, state, or local law, the CPO shall allocate to any qualified bidder the following bid incentive for utilization of a BEPD as a prime contractor or subcontractor in the performance of the contract.

<b>% of total dollar contract amount performed by BEPD</b>	<b>Bid incentive</b>
2 to 5%	½ % of the contract base bid
6 to 10%	1 % of the contract base bid
11% or more	2 % of the contract base bid

The bid incentive shall be calculated and applied in accordance with the provisions of this section. The bid incentive is used only to calculate an amount to be used in evaluating the bid. The bid incentive does not affect the contract price.

As part of the contract close-out procedure, if the CPO determines that the Contractor has successfully met his or her BEPD utilization goals either as a prime contractor or with subcontractors, the CPO shall issue an earned credit certificate that evidences the amount of earned credits allocated to the Contractor. The Contractor may apply the earned credits as the bid incentive for any future contract bid of equal or less dollar amount. The earned credit certificate is valid for three years from the date of issuance and shall not be applied towards any future contract bid after the expiration of that period.

The Contractor may apply the earned credit certificate on multiple future contract bids during the three-year period in which the certificate is valid, but may only receive one bid incentive for bid evaluation purposes on one contract award. If the Contractor applies the earned credit certificate on multiple contract bids and is the lowest responsive and responsible bidder on more than one contract bid, the earned credit certificate shall be applied to the contract bid first to be advertised by the Department of Procurement Services, or if multiple contract bids were advertised on the same date, the earned credit certificate shall be applied only to the contract bid with the greatest dollar value.

The Contractor shall maintain accurate and detailed books and records necessary to monitor compliance with this section and shall submit such reports as required by the CPO, or the commissioner of the supervising department.

Full access to the Contractor's and Subcontractor's records shall be granted to the CPO, the commissioner of the supervising department, or any duly authorized representative thereof. The Contractor and Subcontractors shall maintain all relevant records for a period of at least three years after final acceptance of the work.

The CPO is authorized to adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement of this section.

**1.3.3. Wages**

**1.3.3.1. Living Wage Ordinance**

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

- A. If (1) the Contractor has 25 or more full-time employees, and if (2) at any time during the performance of the contract the Contractor and/or any subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then The Contractor's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the Contract term when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Contract term.
- B. As of July 1, 2011 the Base Wage is \$11.18. The current rate can be found on the Department of Procurement Services' website. Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Contract, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then the Contractor must pay the prevailing wage rates.
- C. The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The Contractor agrees to provide the City with documentation acceptable to the CPO demonstrating that all Covered Employees, whether employed by the Contractor or by a subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit the Contractor and/or subcontractors to verify compliance herewith.
- D. Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in

ineligibility for any award of a City contract or subcontract for up to three years.

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

**1.3.3.2. Prevailing Wage Rates**

- A. If this Contract calls for the construction of a “public work,” within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”), the Act requires Contractors and Subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the “prevailing rate of wages” (hourly wages plus fringe benefits) in the county where the work is performed. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor’s website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All Contractors and Subcontractors rendering services under a Contract for the construction of a public work must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties.
- B. If this Contract is federally funded, the Contractor will ensure that it and its Subcontractors comply with the applicable provisions of the Davis-Bacon Act (prevailing wages) Act, 40 U.S.C. sec 276, as amended, and the Copeland (anti-kickback) Act, 18 U.S.C., sec 874, and related regulations and pay such applicable prevailing wage rates. Please refer to: <http://www.wdol.gov/>
- C. The term general prevailing hourly rate, when used in this requirement will mean the hourly cash wages plus fringe benefits for health and welfare, insurance, vacations and pensions paid generally, in the locality in which the work is being performed, to employees engaged in work of a similar character on public works.
- D. As a condition of making payment to the Contractor, the City may require the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Contract in accordance with Illinois or federal law, as applicable.

**1.3.4. Economic Disclosure Statement and Affidavit and Appendix A (“EDS”)**

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

Contractors must complete an online EDS prior to the Bid Opening Date.

Contractors are responsible for notifying the City and updating their EDS any time



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

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

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

Pursuant to MCC Sect. 2-156-030(b), it is illegal for any elected official 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 MCC Sect. 2-156-030(b) by any elected official with respect to this contract will be grounds for termination of this contract. The term business relationship is defined as set forth in MCC Sect. 2- 156-080.

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

**1.3.4.2. Certifications Regarding Bribery, Debts, and Debarment Pursuant to MCC Sect. 1-23 and 720 ILCS 5/33E**

The Contractor or each joint venture partner, if applicable, must complete the appropriate subsections in the EDS which certify that the Contractor or each joint venture partner, its agents, employees, officers and any subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the City of Chicago, the State of Illinois, any agency

of the federal government or any state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

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

- No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.
- For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.
- One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

**1.3.4.3. Federal Terrorist (No-Business) List**

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

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

**1.3.4.4. Inspector General and Legislative Inspector General**

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such applicant to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Ch. 2-56 or 2-55, respectively. Contractor understands and will abide by all provisions of MCC Ch. 2-56 and 2-55.

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

**1.3.4.5. Governmental Ethics Ordinance 2-156**

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

**1.3.5. Restrictions on Business Dealings**

**1.3.5.1. Conflicts of Interest**

The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any enterprise which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The Contractor further covenants that in its performance of the Contract no person having any such interest shall be employed. If the City determines that the Contractor does have such a conflict of interest, the City will notify the Contractor in writing, stating the basis for its determination. The Contractor will thereafter have 30 days in which to respond with reasons why the Contractor believes a conflict of interest does not exist. If the Contractor does not respond or if the City still reasonably determines a conflict of interest to exist, the Contractor must terminate its interest in the other enterprise.

**1.3.5.2. Prohibition on Certain Contributions, Mayoral Executive Order 2011-**

**4**

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

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

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

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

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

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

For purposes of this Order:

“City Contractor” means a person who or entity that has submitted a bid for or enters into a Contract with the City.

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

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

“Owner” means any person with an ownership or beneficial interest in an entity of more than 7.5%.

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

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

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

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

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

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

### **1.3.7. Other City Ordinances and Policies**

#### **1.3.7.1. False Statements**

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

**1.3.7.2. Office of Compliance, MCC Ch. 2-26**

It is the duty of any bidder, proposer, Consultant, 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 any bidder, proposer, consultant or such applicant to cooperate with the Office of Compliance in any investigation or audit pursuant to MCC Ch. 2-26. The Contractor understands and will abide by all provisions of MCC Ch. 2-26. All subcontracts will inform Subcontractors of this provision and require understanding and compliance with it.

**1.3.7.3. MacBride Principles Ordinance, MCC Sect. 2-92-580**

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

In accordance with MCC Sect. 2-92-580, if the primary Contractor conducts any business operations in Northern Ireland, it is hereby required that the Contractor will make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

For those bidders who take exception in competitive bid contracts to the provision set forth above, the City will assess an eight percent (8%) penalty. This penalty will increase their bid price for the purpose of canvassing the bids in order to determine who is to be the lowest responsible bidder. This penalty will apply only for purposes of comparing bid amounts and will not affect the amount of any contract payment.

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

**1.3.7.4. Shakman Accord**

- A. The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.
- B. Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a Subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Contract are employees or Subcontractors of Contractor, not employees of the City of Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.
- C. Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Contract, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.
- D. In the event of any communication to Contractor by a City employee or City official in violation of paragraph (b) above, or advocating a violation of paragraph(c) above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Contract.

### **1.3.8. Compliance with Environmental Laws and Related Matters**

#### **1.3.8.1. Definitions**

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

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

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

**Environmental Law:** An Environmental Law is any Law that in any way, directly or indirectly, in whole or in part, bears on or relates to the environment or to human health or safety. A non-exhaustive list of Environmental Laws includes without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 5101, et seq., the Clean Air Act, 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., the Occupational Safety and Health Act, 29 U.S.C. 651, et seq., the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., the Illinois Health and Safety Act, 820 ILCS 225/.01, et seq., Chapters 7-28 and 11-4 of the Chicago Municipal Code, and all related rules and regulations.

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

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

#### **1.3.8.2. Joint Ventures**

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

#### **1.3.8.3. Compliance With Environmental Laws**



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

**1.3.8.4. Costs**

Any cost arising directly or indirectly, in whole or in part, from any noncompliance, by Contractor or any Subcontractor, with any Environmental Law, will be borne by the Contractor and not by the City. No provision of this Contract is intended to create or constitute an exception to this provision.

**1.3.8.5. Proof of Noncompliance; Authority; Cure**

- A. Any adjudication, whether administrative or judicial, against Contractor or any Subcontractor, for a violation of any Environmental Law, is sufficient proof of noncompliance, and therefore of an event of default, for purposes of this Contract.
- B. Any citation issued to/against Contractor or any Subcontractor, by any government agent or entity, alleging a violation of any Environmental Law, is sufficient proof of noncompliance for purposes of this Contract, and therefore of an event of default, if the citation contains or is accompanied by, or the City otherwise obtains, any evidence sufficient to support a reasonable conclusion that a violation has occurred.
- C. Any other evidence of noncompliance with any Environmental Law is sufficient proof of noncompliance for purposes of this Contract, and therefore of an event of default, if the evidence is sufficient to support a reasonable conclusion that noncompliance has occurred.
- D. The CPO shall have the authority to determine whether noncompliance with an Environmental Law has occurred, based on any of the foregoing types of proof. Upon determining that noncompliance has occurred, s/he may in his/her discretion declare an event of default and may in his/her discretion offer Contractor an opportunity to cure the event of default, such as by taking specified actions, which may include without limitation ceasing and desisting from utilizing a Subcontractor.
- E. The CPO may consider many factors in determining whether to declare an event of default, whether to offer an opportunity to cure, and if so any requirements for cure, including without limitation: the seriousness of the noncompliance, any effects of the noncompliance, Contractor's and/or Subcontractor's history of compliance or noncompliance with the same or other Laws, Contractor's and/or Subcontractor's actions or inaction towards mitigating the noncompliance and its effects, and Contractor's or

Subcontractor's actions or inaction towards preventing future noncompliance.

**1.3.8.6. Copies of Notices and Reports; Related Matters**

If any Environmental Law requires Contractor or any Subcontractor to make, submit or file any non-Routine notice or report of any kind, to any Environmental Agency or other person, including without limitation any agency or other person having any responsibility for any type of emergency response activity, then Contractor must deliver a complete copy of the notice or report (or, in the case of legally required telephonic or other oral notices or reports, a comprehensive written summary of same) to the Law Department within 48 hours of making, submitting or filing the original report.

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

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

**1.3.8.7. Requests for Documents and Information**

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

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

**1.3.8.8. Environmental Claims and Related Matters**

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

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

**1.3.8.9. Preference for Recycled Materials**

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

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

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

- 7-28-390 Dumping on public way;

- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

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

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

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

### **1.3.9. Contract Disputes**

#### **1.3.9.1. Procedure for Bringing Disputes to the Department**

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

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

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

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

**1.3.9.2. Procedure for Bringing Disputes before the CPO**

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

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

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

The administrative process is described more fully in the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago", which are available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room, and on-line at:

[http://www.cityofchicago.org/content/dam/city/depts/dps/RulesRegulations/Dispute\\_Regulations\\_2002.pdf](http://www.cityofchicago.org/content/dam/city/depts/dps/RulesRegulations/Dispute_Regulations_2002.pdf)

**1.4. Events of Default and Termination**

**1.4.1. Events of Default**

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

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the City.
- B. Contractor's material failure to perform any of its obligations under this Contract including the following:
  - 1. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services
  - 2. Failure to have and maintain all professional licenses required by law to perform the Services;

3. Failure to timely perform the Services;
4. Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the CPO or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
5. Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;
6. Discontinuance of the Services for reasons within Contractor's reasonable control;
7. Failure to update promptly EDS(s) furnished in connection with this Contract when the information or responses contained in it or them is no longer complete or accurate;
8. Failure to comply with any other term of this Contract, including the provisions concerning insurance and nondiscrimination; and
9. Any change in ownership or control of Contractor without the prior written approval of the CPO, which approval the CPO will not unreasonably withhold.
10. Contractor's default under any other Contract it may presently have or may enter into with the City during the life of this Contract. Contractor acknowledges and agrees that in the event of a default under this Contract the City may also declare a default under any such other agreements.
11. Contractor's repeated or continued violations of City ordinances unrelated to performance under the Contract that in the opinion of the CPO indicate a willful or reckless disregard for City laws and regulations.
12. Contractor's use of a subcontractor that is currently debarred by the City or otherwise ineligible to do business with the City.

**1.4.2. Cure or Default Notice**

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

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

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

that it cannot be cured. Failure to cure within the specified time may result in a Default Notice to the Contractor.

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

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

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

#### **1.4.3. Remedies**

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

#### **1.4.4. Non-Exclusivity of Remedies**

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

#### **1.4.5. City Reservation of Rights**

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

#### **1.4.6. Early Termination**

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

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

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

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

### **1.5. Department-specific Requirements**

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

#### **1.5.1. Department of Aviation Standard Requirements**

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

##### **1.5.1.1. Confidentiality of Airport Security Data**

Contractor has an ongoing duty to protect confidential information, including but not limited to any information exempt from disclosure under the Illinois Freedom of Information Act such as information affecting security of the airport ("Airport Security Data"). Airport Security Data includes any Sensitive Security Information as defined by 49 CFR Part 1520. Contractor acknowledges that information provided to, generated by, or encountered by Contractor may include Airport Security Data. If Contractor fails to safeguard the confidentiality of Airport Security Data, Contractor is liable for the reasonable costs of actions

taken by the City, the airlines, the Federal Aviation Administration (“FAA”), or the Transportation Security Administration (“TSA”) that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements, procurement and installation of security devices, and posting of guards. All Subcontracts or purchase orders entered into by the Consultant, with parties providing material, labor or services to complete the Work, must contain the language of this section. If the Contractor fails to incorporate the required language in all Subcontracts or purchase orders, the provisions of this section are deemed incorporated in all Subcontracts or purchase orders.

**1.5.1.2. Aviation Security**

This Agreement is subject to the airport security requirements of 49 United States Code, Chapter 449, as amended, the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations in 14 CFR Part 107 and all other applicable rules and regulations promulgated under them. All employees providing services at the City’s airports must be badged by the City. (See **Airport Security Badges**.) Contractor, Subcontractors and the respective employees of each are subject to such employment investigations, including criminal history record checks, as the Administrator of the Federal Aviation Administration (“FAA”), the Under Secretary of the Transportation Security Administration (“TSA”), and the City may deem necessary. Contractor, Subcontractors, their respective employees, invitees and all other persons under the control of Contractor must comply strictly and faithfully with any and all rules, regulations and directions which the Commissioner, the FAA, or the TSA may issue from time to time may issue during the life of this Agreement with regard to security, safety, maintenance and operation of the Airport and must promptly report any information regarding suspected violations in accordance with those rules and regulations.

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

**1.5.1.3. Airport Security Badges**

As part of airport operations and security, the Contractor must obtain from the airport badging office Airport Security Badges for each of his employees, subcontractors, material men, invitees or any person(s) over whom Contractor has control, which must be visibly displayed at all times while at the airport. No person will be allowed beyond security checkpoints without a valid Airport Security Badge. Each such person must submit signed and properly completed application forms to receive Airport Security Badges. Additional forms and tests may be required to obtain Airport Drivers Certification and Vehicle Permits. The application forms will solicit such information as the Commissioner may require



in his discretion, including but not limited to name, address, date of birth (and for vehicles, drivers license and appropriate stickers). The Contractor is responsible for requesting and completing the form for each employee and subcontractors employee who will be working at the Airport and all vehicles to be used on the job site. Upon signed approval of the application by the Commissioner or his designee, the employee will be required to attend a presentation regarding airport security and have his or her photo taken for the badge. The Commissioner may grant or deny the application in his sole discretion. The Contractor must make available to the Commissioner, within one day of request, the personnel file of any employee who will be working on the project.

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

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

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

- Each person must wear and display his or her Airport Security Badge on their outer apparel at all times while at the airport.
- All individuals operating a vehicle on the Aircraft Operations Area (AOA) must be familiar and comply with motor driving regulations and procedures of the State of Illinois, City of Chicago and the Department of Aviation. The operator must be in possession of a valid, State-issued Motor Vehicle Operators Drivers License. All individuals operating a vehicle on the AOA without an escort must also be in possession of a valid Aviation-issued Airport Drivers Permit.
- All operating equipment must have an Airport Vehicle Access Permit affixed to the vehicle at all times while operating on the Airport. All required City stickers and State Vehicle Inspection stickers must be valid.
- Individuals must remain within their assigned area and haul routes unless otherwise instructed by the Department of Aviation.
- The Contractors personnel who function as supervisors, and those that escort the Contractors equipment/operators to their designated work

sites, may be required to obtain an added multi-area access designation on their personnel Airport Security Badge which must also be displayed while on the AOA.

#### **1.5.1.4. General Requirements Regarding Airport Operations**

##### **1.5.1.4.1. Priority of Airport Operations**

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

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

##### **1.5.1.4.2. Interruption of Airport Operations**

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

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

**1.5.1.4.3. Safeguarding of Airport Property and Operations**

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

**1.5.1.4.4. Work on the Airfield**

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

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

The Contractor acknowledges the importance of fully complying with the requirements of this section in order to protect aircraft and human life, on or off the ground. Failure on the part of the Contractor to perform the work in accordance with the provisions of this section and to enforce same with

regard to all subcontractors, material men, laborers, invitees and all other persons under the Contractor's control is an event of default.

**1.5.1.5. Parking Restrictions**

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

**1.5.2. Department of Emergency Management and Communications (OEMC) Security Requirements**

**1.5.2.1. Identification of Workers and Vehicles**

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

**1.5.2.2. Access to Facilities**

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

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

- Deliver to the City consent forms signed by all employees who will work on the project consenting to the City's and the Contractor's performance of the background checks described in this Section; and
- Deliver to the City consent forms signed by all employees who will require access to the O.E.M.C facility consenting to the searches described in this Section.

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

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

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

#### **1.5.2.3. Security Badges and Vehicle Permits**

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

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

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

Access to the Work sites will be as shown or designated on the Contract Documents Drawings or determined by the Executive Director. The Executive Director may deny access when, in his sole discretion, the vehicle or individual poses some security risk to O.E.M.C.

#### **1.5.2.4. Gates and Fences**

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

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

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

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

**1.5.2.5. Hazardous or Illegal Materials**

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

**1.5.3. Chicago Police Department Security Requirements**

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

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

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

**1.5.4. Department of Water Management ("DOWM") Security Requirements**

**1.5.4.1. Identification of Workers and Vehicles**

All employees and vehicles working within DOWM facilities must be properly identified. All vehicles and personnel passes will be issued to the Contractor by the Commissioner, as required. Contractor, Subcontractors, and employees must return identification material to the Commissioner upon completion of their respective work within the Project, and in all cases, the Contractor must return all identification material to the Commissioner after completion of the

Project. Final Contract Payment will not be made until all passes issued have been returned to DOWM Security.

**1.5.4.2. Access to Facilities**

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

- Provide the City with a list of all employees requiring access to enable the City to conduct such background and employment checks;
- Deliver to the City consent forms signed by all employees who will work on the project consenting to the City's and the Contractor's performance of the background checks described in this Section; and
- Deliver to the City consent forms signed by all employees who will require access to the DOWM facility consenting to the searches described in this Section.

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

**1.5.4.3. Security Badges and Vehicle Permits**

Each employee whom Contractor wishes to have access to a DOWM facility must submit a signed, completed "Area Access Application" to the DOWM to receive a DOWM Security Badge. If Contractor wishes a vehicle to have access to a DOWM facility, Contractor must submit a vehicle access application for that vehicle. The applications will solicit such information as the Commissioner may require in his discretion, including name, address, date of birth (and for vehicles, driver's license and appropriate stickers). The Contractor is responsible for requesting and completing these forms for each employee who will be working at DOWM



facilities and all vehicles to be used on the job site. The Commissioner may grant or deny the application in his sole discretion. The Contractor must make available to the Commissioner, within one (1) day of request, the personnel file of any employee who will be working on the project.

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

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

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

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

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

**1.5.4.4. Gates and Fences**

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

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

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

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

**1.5.4.5. Hazardous or Illegal Materials**

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

## **2. SPECIAL CONDITIONS FOR SUPPLY CONTRACTS**

### **2.1. Purchase Orders**

Unless otherwise provided in the Detailed Specifications, orders for products to be provided under this Contract will be in the form of a written City of Chicago purchase order (a.k.a. purchase order release, blanket order release, or sub-order) that will be issued by the Department and sent to the Contractor. Purchase orders will indicate the specification number, purchase order number, product description, quantities ordered for each line item, unit cost, total cost, shipping address, delivery date, fund chargeable information and other pertinent instructions regarding delivery.

For purchase orders issued before a price increase effective date, if this Contract provides for price increases, Contractor must honor Contract prices listed on the purchase order, even if the purchase order specifies multiple shipments with delivery dates that are scheduled after the effective date of the price increase.

The Contractor must not honor any verbal purchase order(s) or make any deliveries without receipt of a written purchase order issued by the Department. Any items provided by the Contractor without a written purchase order are made at the Contractor's risk. Consequently, in the event a written purchase order is not provided by the City, the Contractor releases the City from any liability whatsoever to pay for any items provided without a written purchase order.

### **2.2. Delivery and Acceptance**

#### **2.2.1. Delivery**

As stated above, Contractor must not make any deliveries without a written City of Chicago purchase order issued by the appropriate department. Upon receipt of a purchase order, deliveries must be made to the location(s) listed in the Detailed Specifications or other location specified by the Commissioner or CPO in the written purchase order. Unless otherwise clearly and specifically provided in the Detailed Specifications or the written purchase order, all deliveries will be F.O.B. destination (City of Chicago).

Contractor understands and agrees that the initial acceptance of any delivery will not be considered as a waiver of any provision of this Contract and will not relieve the Contractor of its obligation to supply satisfactory goods which conform to the Contract.

#### **2.2.2. Inspection \ Defects**

The City will have the right to inspect any products to be provided by Contractor under this Contract. Upon delivery of the products, the City will conduct an in-depth initial visual examination solely for the purpose of identifying gross and obvious damage, defects or non-conformance with specifications. The Contractor's representative may be present for the initial examinations. This does not limit the City's right to conduct subsequent inspection of the products delivered.

If defects or omissions are discovered in the initial or subsequent inspections, the City may exercise any or all of the following remedies, in addition to any other remedies specified in this agreement:

- Refuse acceptance of any/all units.
- Require the Contractor to make corrections at Contractor's expense, either on-site or at Contractor's place of business, whether or not the term of the Contract has expired.
- Require the Contractor to replace the units at Contractor's expense.
- Require the Contractor to reimburse the City for the cost of inspection.

Any and all labor and materials which may be required to correct or replace damaged, defective or non-conforming products must be provided by the Contractor at no cost to the City. The Contractor must correct or replace the incorrect, damaged or defective or non-conforming items within seven (7) business days of the return unless otherwise provided in the Detailed Specifications. The City of Chicago will not be subject to restocking charges.

Failure to correct or replace unacceptable goods, or repeated delivery of unacceptable goods, will be an event of default under this Contract.

### **2.2.3. Shipment errors**

The Contractor will be responsible for any errors in shipments that are the fault of the Contractor. The Contractor must make arrangements with their common carrier or company personnel to pick-up, at Contractor's expense, any un-ordered products, over-shipments of product, or products that otherwise do not comply with the applicable purchase order within forty-eight (48) hours after notification by the Department. Contractor must promptly supply any under-shipment of product promptly after notification by the Department.

The City of Chicago will not be subject to restocking charges due to shipment errors.

Repeated errors in shipments will be an event of default under this Contract.

### **2.2.4. Acceptance**

Products provided under this Contract will be deemed to be accepted by the City thirty days after delivery, unless previously rejected. The City may revoke acceptance if items are later discovered to be non-conforming or if the non-conformity is not remedied by the Contractor as expected by the City, even if the value of the item(s) is not substantially decreased due to the non-conformity.

### **2.3. Unspecified Items**

Any Commodity not specifically listed herein may be added to this Contract if it falls within the same general category of items/services already specified in the Contract. Pursuant to 2-92-646 of the Municipal Code of Chicago, the lifetime, aggregate value of the City's purchase of any items/services added to this Contract

pursuant to this provision must not exceed ten percent (10%) of the original value of the Contract.

The Department will notify the Contractor in writing of the unspecified items which are necessary and request a written price proposal for the addition of the item(s) to this Contract under the same terms and conditions of the original Contract. Upon receipt of a price proposal, the Department will forward the request and proposal to the Chief Procurement Officer for approval to add the unspecified item(s) to the Contract. Such item(s) may be added to the Contract only if the prices are competitive with current market prices and said items are approved by the Chief Procurement Officer in writing. The Chief Procurement Officer reserves the right to seek competitive pricing information on said item(s) from other suppliers and to procure such item(s) in a manner that serves the best interest of the City.

Any such unspecified item(s) delivered by the Contractor, without a written approval and modification of the Contract signed by the Chief Procurement Officer, are delivered entirely at the Contractor's risk. Consequently, the Contractor hereby releases the City from any liability whatsoever to pay for any items delivered prior to the Contractor's receipt of fully signed Contract modification approving the unspecified item(s).

## **2.4. Quality, Source, Substitution, and Labeling**

### **2.4.1. Quality.**

Product must conform to any industry standards specified in the Detailed Specifications as well as the best industry practices and standards with respect to quality of materials and workmanship. Unless otherwise specified in the Detailed Specifications, all products provided must be new and in conformance with the Contract and acceptable in every detail to the Commissioner. If requested, the Contractor must certify to the Commissioner that all products to be provided comply with all Contract requirements. Only products which conform to the quality requirements of the Contract will be accepted.

### **2.4.2. Source.**

The Contractor must promptly notify the Commissioner upon request, of the source (or sources) from which the Contractor expects to obtain the products. The source(s) of supply, including the manufacturer, must not be debarred from contracting or otherwise be ineligible to contract with the City.

If sources are found to be unacceptable at any time or fail to be the source of products satisfactory to the Commissioner, the Contractor must furnish products from other, acceptable sources.

### **2.4.3. Substitution.**

In cases of product unavailability or other conditions beyond the control of the Contractor arising after contract award, or if the specification allowed bidders to bid substitute products, Contractor may request to provide substitutes for the products specified in the Detailed Specifications.

Each request for substitution must be submitted separately and must include sufficient information that, in the Commissioner's sole judgment and discretion, enables the Commissioner to determine the suitability of the proposed substitute for the specified product. The information must include:

- (a) Product identification, including manufacturer's name and address.
- (b) Manufacturer's literature including:
  - i) Product description
  - ii) Reference standards
  - iii) Performance and test data
- (c) Samples, as applicable. Samples must be at no charge and will not be returned.
- (d) Name and address of similar user of the product and date of usage.
- (e) Itemized comparison of the proposed alternate item with specified item listing significant variations.

The Contractor warrants and represents that in making a formal request for substitution that: (1) the proposed substitution is equivalent to or superior in all respects to the product specified; (2) the same warranties and guarantees will be provided for the substitute as for the product specified. Any additional cost, or any loss or damage, arising from the substitution of any products for those specified shall be borne by the Contractor.

The Commissioner may, in his or her sole discretion, accept an alternate product for a specified product, provided the alternate product is, in the Commissioner's sole opinion, the equivalent of the product specified in the Detailed Specifications. The Commissioner will not entertain more than one request for substitution per year except in cases of product unavailability or other conditions beyond the control of the Contractor.

#### **2.4.4. Testing Laboratory Labels.**

All products containing electrical wiring must conform to the City Electrical Code, which requires such products to be approved and so labeled by a testing laboratory acceptable under the Chicago Electrical Code Section 14-64-010.

**2.5. Manufacturer's Warranty & Product Information**

Contractor must have, and must demonstrate upon request or as required by the Detailed Specifications, that it has authorization to transfer product warranties to the City of Chicago. The Contractor is required to provide and transfer all documentation issued by the manufacturer for the items to be provided under this agreement. This includes the manufacturer's genuine parts/product information, recall notices, manuals, licenses, assemblies and/or accessories as supplied by the original equipment manufacturer (O.E.M.).

The Contractor must provide the original product warranty and related services for the products provided under this Contract in accordance with the standard warranty regularly provided by the OEM for that product, unless the Detailed Specifications call for a different warranty.

**2.6. Contractor's Warranties**

The Contractor warrants that the title to the products to be provided under this agreement is good and its transfer is rightful, and that the products will be delivered to the City free from all liens or any security interest or other encumbrance.

In addition to all warranties that may be implied by law, the items shall conform to specifications, drawings, and other requirements in the Detailed Specifications and shall be free from defects in materials and workmanship. Contractor also warrants that they will be free from defects in design except to the extent that they are non-standard products manufactured pursuant to detailed designs furnished by the City and the defect is in the portion of the design furnished by the City. Such warranties, including warranties implied by law, shall run to City, its successors, assigns, customers, and to users of the goods.

### **3. DETAILED SPECIFICATIONS / SCOPE OF WORK**

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**4. INSURANCE REQUIREMENTS**

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**5. M/WBE OR DBE SPECIAL CONDITIONS**

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**6. ECONOMIC DISCLOSURE AFFIDAVIT AND OTHER REQUIRED FORMS/AFFIDAVITS**

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**7. PROPOSAL; SIGNATURE PAGES**

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