

**BOOK 1**  
**TERMS AND CONDITIONS FOR CONSTRUCTION**

**CITY OF CHICAGO**  
DEPARTMENT OF TRANSPORTATION



**RAHM EMANUEL**  
**MAYOR**

Issued by the  
DEPARTMENT OF PROCUREMENT SERVICES

JAMIE L. RHEE  
CHIEF PROCUREMENT OFFICER

FTA Funds

The City reserves the right to modify the terms and conditions at any time.  
(Note: This is a sample; actual terms and conditions may vary on a contract by contract basis.)

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**I. GENERAL PROVISIONS**

**A. Acronyms**

“AASHTO” - American Association of State Highway and Transportation Officials

“ACI” - American Concrete Institute

“AED” - Associated Equipment Distributors

“AISC” - American Institute of Steel Construction

“ANSI” - American National Standards Institute

“ASME” - American Society of Mechanical Engineers

“ASTM” - American Society for Testing and Materials

“CPM” - Critical Path Method (See ,  
“Schedule,” and also Section .)

“CTA” - Chicago Transit Authority

“EDS” - See Section .

“FEPC” - Fair Employment Practices Commission

“IDOT” - Illinois Department of Transportation.

“NEC” - National Electric Code

“NEMA” - National Electrical Manufacturer’s Association

“NFPA” - National Fire Protection Association

“OSHA” - U.S. Occupational Safety and Health Administration

“SSRBC” - IDOT Standard Specifications For Road and Bridge Construction issued by IDOT, as amended from time to time. See:  
<http://www.dot.state.il.us/desenv/hwyspecs.html>.

**B. Definitions**

1. “Architect/Engineer” means the person designated by the Commissioner to provide the Contract drawings and Detailed Specifications for the Work you are to perform.
2. “Business day” means Monday through Friday, unless an officially designated City holiday falls on one of those days. By contrast, see “Day” and “Working Day” .
3. “Chief Procurement Officer” means the Chief Procurement Officer for the City and any representative duly authorized in writing to act on his/her behalf.
4. “City” means the City of Chicago.
5. “City Engineer” means Chief Engineer of the corresponding Bureau of the Department Contract and any representative duly authorized in writing to act on his behalf.
6. “City Forester” means the Commissioner of the Department of Streets and Sanitation or his designated representative.
7. “Commissioner” means the head of the Department and any representative duly authorized in writing to act on his behalf.
8. “Comptroller” means City Comptroller or his designated representative.
9. “Construction Manager” means the person designated by the Commissioner to oversee construction of the Project.
10. “Consultant(s)” refers to the person, firm or corporation awarded a contract by the City to provide professional architectural or engineering design services or construction supervision for the Project.

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11. "Contract" means this Contract, including your bid proposal (as accepted by the City), the City's bid specification, which includes Books 1, 2, and 3, plans and drawings, addenda, all exhibits and schedules that are attached to it and documents incorporated in it by reference; fully executed performance and payment bond(s); and all amendments, modifications, or revisions made from time to time in accordance with its terms.
12. "Contract Completion Date" is the date, determined by the Commissioner, on which the Project is to reach Substantial Completion. The Contract Completion Date will be determined based on the duration for the Project set by the Contract as adjusted by any Contract Modifications that extend or reduce the duration of the Project.
13. "Contract Modification" means a written modification of the terms and conditions of this Contract, signed by you, the Chief Procurement Officer, the Mayor, and the Comptroller.
14. "Contract Price" is defined in Section
15. "Contract Time" is the duration of the Work from when the Work is required to begin until the scheduled date for Substantial Completion, including approved time extensions. See .
16. "Contractor" or "you" means the entity that is awarded this Contract.
17. "Corporation Counsel" means the head of the City's Department of Law and any Assistant Corporation Counsel duly authorized to act on the Corporation Counsel's behalf.
18. "Day" means calendar day, unless otherwise stated. By contrast, see "Business Day" and "Working Day" .
19. "Department" means the City Department identified on the cover of this Book 1 of this Contract.
20. "Detailed Specifications" means the written requirements for materials and equipment to be used in the Work, including any plans or drawings and standards of performance for the Work, which are set forth in Book 3 or incorporated in it by reference.
21. "Engineer" means the Commissioner of the Department or any other person designated by him. See also .
22. "Environmental Laws" means all applicable federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
23. "Equipment" means all machinery and equipment, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper and acceptable completion of the Work.
24. "Field Order" means the written order to you, signed by the Commissioner, unilaterally directing changes in the Work or the Contract Time, or directing you to take corrective action and to adhere to Contract documents.
25. "Final Completion and Acceptance of the Work " means the last date on which all of the following events have occurred:
  - a. the Commissioner has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract documents;
  - b. final inspections have been completed and operations systems and equipment testing have been completed;
  - c. final occupancy certifications have been issued;
  - d. all deliverables have been provided to the Commissioner; and
  - e. all contractual requirements for final payment have been completed.
26. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls, oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 USC Sec. 2014, *et seq.*), pesticides under the federal Insecticide, Fungicide and Rodenticide Act (7 USC Sec. 136, *et seq.*) and any hazardous waste, toxic substance or related material, including any substance defined or treated



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as "hazardous waste," "special waste," or "toxic substance" (or comparable term) in any Environmental Law.

27. "Include" (in all of its forms) means "include without limitation" unless the context clearly indicates otherwise.
28. "Management Consultant" or "Program Manager" means the organization or entity, if any, that the City has retained to oversee the planning, design, and construction of the Project.
29. "Municipal Code" means the Municipal Code of Chicago.
30. "Notice to Bidders" means Advertisement for Bids, the official notice inviting bids for the proposed Work to be done under this Contract.
31. "Night Work" means work performed between the hours of 9:00 p.m. and 8:00 a.m. unless otherwise defined in the plans.
32. "Notice to Proceed" means written authorization from the Commissioner for you to begin the Work on a specified date.
33. "Product Data" are illustrations, standard schedules, performance charts, instructions, descriptive literature, catalogs and brochures, performance and test data, test certifications, diagrams and other information that you furnish to illustrate a material, product, or system, for some portion of the Work.
34. "Project" means, collectively, the improvements you will be constructing in accordance with the Contract.
35. "Record Documents" means all documents pertaining to the completed Work and Project that the Contract requires you to provide to the City, including Record Drawings, record Shop Drawings, Product Data, warranties, instructions, parts list, certified payrolls, operations and maintenance manuals (and photographs and video tape if specified in the Contract).
36. "Record Drawings" means drawings reflecting the final built Project configuration, including approved modifications.
37. "Provide" means furnish and install, unless otherwise specified in this Contract.
38. "Punch List" or "Punch List work" means minor adjustment, repairs or deficiencies in the Work, as determined by the Commissioner, in his sole discretion.
39. "Samples" mean physical examples that illustrate materials, equipment or workmanship. Samples include materials, fabricated items, equipment, devices appliances, or parts of them as called for in the Detailed Specifications, and any other Samples that may be required by the Commissioner to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials you propose conform to the required characteristics.
40. "Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the Work by you or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings include: fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and systems and methods of construction as may be required to show that the materials, equipment or system conform to the Contract requirements.
41. "Special Wastes" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 of 35 Illinois Administrative Code, Subtitle G, Ch. 1.
42. "Standard Specifications" means the SSRBC. See Section .
43. "State" means the State of Illinois.
44. "Subcontractor" means any person or entity with whom you contract to provide any part of the Work, and all subcontractors of any tier, including suppliers and material persons, whether or not

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in privity with you. See Section for "Field Labor Subcontractor" and Section for "Materials Subcontractor."

45. "Submittals" means Schedule, Shop Drawings, Product Data or Samples and other items as may be required by the Contract.
46. "Substantial Completion Date" is the date upon which you have met the requirements for Substantial Completion, in the opinion of the Commissioner.
47. "Substantial Completion of the Project" or "Substantial Completion" means that, in the opinion of the Commissioner, you have completed all Work in accordance with the Contract, except for Punch List work, and the City is able to occupy and use the Project for the purpose intended.
48. "Work" means all labor, materials, equipment, deliverables, and other incidentals you are to provide under this Contract that are necessary or convenient to the successful completion of this Project and that are required by, incidental or collateral to the Contract.
49. "Working Day" has the same meaning as in the SSRBC. By contrast, see "Business Day" () and "Day" ().
50. "You," in all of its forms, means the Contractor.

**C. Usage and Contract Interpretation**

1. Unless a contrary meaning is specifically noted elsewhere, words such as, "as required," "as directed," "as permitted," and similar words mean that requirements, directions of, and permission of the Commissioner are intended. The words "approved," "acceptable," "satisfactory," or words of like import, mean "approved by," "acceptable to," or "satisfactory to" the Commissioner. The words "necessary," "proper," or words of like import as used regarding the extent, conduct or character of the Work specified means that Work must be conducted in a manner, to the extent, or be of character that is "necessary" or "proper" in the opinion of the Commissioner. The Commissioner's judgment in these matters is final and you are not permitted to contest it.
2. Where the imperative form of an address is used, such as "perform the excavating," "provide equipment required," "remove obstructions encountered," "furnish and install reinforcing steel bars," etc., that address is directed to you .
3. Any headings in this Contract are for convenience of reference only and do not define or limit its terms or provisions. All article and section references, unless otherwise expressly indicated, are to sections of this Contract. Words importing persons include firms, associations, partnerships, trusts, corporations, joint ventures and other legal entities, including public bodies, as well as natural persons. Words of any gender include correlative words of other genders. Words importing the singular number include the plural and vice versa, unless the context otherwise indicates. All references to any exhibit or document include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity include any person or entity succeeding to the rights, duties, and obligations of those persons or entities in accordance with the terms and conditions of this Contract.
4. Whenever reference to a law is contained in this Contract, the reference includes any amendments to the law.

**D. Severability**

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

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E. Estimates of Quantities

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

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

F. Order of Precedence of Component Contract Parts

This order of precedence governs the interpretation of the Contract in all cases of conflict or inconsistency in it. The order of precedence of the component contract parts is as follows:

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

G. Entire Agreement

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

**II. PROJECT ORGANIZATION**

A. The Commissioner

For the purposes of this Contract, the Commissioner, or any successor office to the Commissioner, will represent the City in all matters relating to the performance of your Work under this Contract and will constitute the point of receipt for all deliverables required under this Contract, unless expressly specified otherwise in this Contract. The Commissioner will decide all questions that arise with regard to the administration of the Contract such as to the quality and acceptability of materials furnished, the Work performed and rate of progress of the Work. The Commissioner will determine the amount and quality of Work performed and materials furnished and their estimates. The Commissioner's estimate will be a condition precedent to your right to receive money due under the Contract, but then only if the modifications or amendments to the Contract are approved in accordance with Article , "Changes in the Work," of the Contract. The Commissioner designates the Architect/Engineer who will provide the Contract drawings and Detailed Specifications for the Work you are to perform. You will not have direct contact with the Architect/Engineer.

B. The Chief Procurement Officer

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

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C. Contractor

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

**III. CONTRACTOR'S OBLIGATIONS**

A. Contractor

Except as may be expressly provided otherwise in the Contract, you are solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work. The intent of the Detailed Specifications is to describe the completed Work that you must provide to fulfill the requirements of the Contract. The Detailed Specifications are not intended to cover every detail of materials, parts, or activities necessary to complete the Work. You must perform all activities that may be required or necessary to complete the Work in accordance with the Contract. For the Contract Price, you must construct, furnish and install all materials, parts and labor necessary to complete the entire Work, whether or not the Contract particularly specifies or shows the details of Work.

1. The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. You are responsible for all segregation of Work between the trade or craft jurisdictional limits. You must make all necessary arrangements to reconcile any jurisdictional conflicts without delay, damage, or cost to the City.
2. Before submission of your bid, you must (i) inspect the site of the proposed Work and familiarize yourself with all the site conditions that may affect your performance of the Work; and (ii) review the Detailed specifications, plans and drawings provided with the bid documents. If at any time before the bid opening you discover any errors, discrepancies or omissions in the Contract or any discrepancy between the Contract and the physical conditions at the site or in any drawings that may be provided later, you must notify the Chief Procurement Officer immediately, in writing for an interpretation through an Addendum.
3. This written request must be received by the Chief Procurement Officer no later than 10 days before bid opening, or no response will be provided. You will not be allowed to take advantage for your discovery of any such error or omission or discrepancy in the Contract after the award of the Contract. Any Work done after the discovery, unless authorized by the Chief Procurement Officer, will be done at your expense.
4. Except as otherwise expressly provided in the Contract, the Contract Price includes all costs and expenses for which you will be compensated in connection with the Contract, including
  - a. the costs of performing any or all of your obligations and duties under the Contract;
  - b. the costs of all materials, equipment, supplies, tools, machinery, labor, supervision, management and items of any and all kinds that are or may be necessary and incidental to the full and satisfactory completion of the Work, whether or not specified or indicated in the Contract;
  - c. the costs of permits, insurance, bonds and license;
  - d. the costs associated with any risks you assume under the Contract;
  - e. the costs associated with all warranties and guarantees;
  - f. the costs of complying with the directives of the Chief Procurement Officer and/or the Commissioner;
  - g. the costs of complying with all laws applicable to the Contract; and
  - h. all overhead and profit.

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No term of the Contract that further specifically indicates that you must bear the costs of an item or that further specifically indicates that an item will be performed at no additional cost to the City will be construed or interpreted to in any way limit the foregoing.

5. You must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of the Notice to Proceed, you must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work. You must include among your staff such personnel and positions as the Contract may require.
  6. If, in the reasonable opinion of the Commissioner, the performance of your personnel assigned to the Work is at an unacceptable level, or does not comply with the provisions of Section , "Competency of Workers," those personnel must cease to be assigned to this Work and must return to you. You must then furnish to the Commissioner the name of a substitute person or persons in accordance with this Section . Absence of sufficient qualified personnel for the Work constitutes an event of default.
  7. You must supervise and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. You are responsible for providing a finished Project that complies fully with the Contract.
  8. Risk of Loss. The Work is under your charge and care until Final Completion and Acceptance of the Work by the Commissioner, unless otherwise specified in the Contract. You assume all responsibility for injury or damage to the Work by action of the elements, fire or any other causes whatsoever, including injury or damage arising from the execution or non-execution of the Work. You must rebuild, repair, restore and make good, at no additional cost to the City, all injuries or damages to any portion of your Work before Final Completion and Acceptance of the Work.
  9. When the City furnishes equipment or materials to you for use or inclusion in the Work, you must safeguard all such equipment and materials as you would equipment and materials that you furnished.
  10. The Work will not be considered to be completed and accepted until you receive written notice from the Commissioner confirming the Final Completion and Acceptance of the Work.
  11. If you have any questions or concerns with respect to the Detailed Specifications or Contract drawings, you must raise them with the Construction Manager.
  12. Except as specified below, you must perform with your own organization and forces not less than 50% of the total amount of Work that is performed at the Project site, computed on the basis of cost. You must require each Subcontractor to become familiar with all provisions of the Contract documents that may affect Subcontractor's work.
- B. Subcontractors
1. All rights and obligations under this Contract are by and between the City and you. Except as may otherwise be provided in the Contract, there is no privity between Subcontractors and the City. Subcontractors have no rights as third-party beneficiaries under this Contract except as may be provided in the Article . You must implement such measures as may be necessary to ensure that your Subcontractors are bound by all applicable provisions of the Contract.
  2. All Subcontractors are subject to the approval of the Chief Procurement Officer. You must not substitute a Subcontractor previously accepted by the Chief Procurement Officer unless the substitution is acceptable to the Chief Procurement Officer. All requests to subcontract must be submitted on a form approved by the Chief Procurement Officer.
  3. You are responsible in all aspects and at all times for all Subcontractor Work.
  4. Except as required under Article , you must upon request furnish the Chief Procurement Officer with one copy of each written subcontract and subsequent modifications signed by you and the Subcontractor evidencing the agreement. All subcontracts must be in writing. All subcontracts

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must require that (i) all Subcontractor's Work be performed in strict accordance with this Contract; and (ii) the Subcontractor is bound by and subject to the requirements of this Contract, whether or not a particular provision specifically mentions Subcontractors. Subcontracts may contain different provisions than are provided in this Contract with respect to payments, schedules, and matters not affecting the quality or timely completion of the Work under this Contract, but only if the City's rights are not thereby prejudiced. You must require each Subcontractor to enter into similar subcontracts with its Subcontractors. You must make available to each Subcontractor, before the execution of the subcontract, copies of this Contract, to which the Subcontractor will be bound pursuant to the requirements of this Section .

5. If a subcontract provided to the City does not comply with these requirements, the City's failure to object is not a waiver of them, and you will remain liable to the City for all damages, costs, fines, losses and claims arising out of the non-compliance.
6. In the case of Work performed by Subcontractors, you must secure warranties from the Subcontractors addressed to and in favor of the City; deliver copies of them to the City upon completion of the Subcontractors' Work and; guarantee and assume full responsibility for the performance of any repair or replacement Work that may be required for the full period of the warranties provided. However, the delivery of the warranties will not relieve you from any obligations assumed under this Contract.
7. You must require each of your Subcontractors (including materialmen) to consent to a collateral assignment to the City of their respective contract with you, which assignments the City may at its sole option accept if you default under this contract and if the City chooses to complete the Project using them. The performance and payment bond required under this specification must include the following rider:

1.

2. **RIDER TO CONTRACTOR'S PERFORMANCE AND PAYMENT BOND**

This Rider supplements Contractor's Performance and Payment Bond ("Bond") on that certain contract with the City of Chicago ("City") bearing Contract No. \_\_\_\_\_ and Specification No. \_\_\_\_\_ ("Contract").

Surety acknowledges that the Contract requires Contractor to obtain from each of its subcontractors consent to a collateral assignment of their contracts with Contractor to the City. The Contract further grants the City the right, upon Contractor's default for failure to comply with Chapter 4-36 of the Municipal Code of the City, and at the City's sole option, to take over and complete the work to be performed by Contractor through the City's assumption of some or all of Contractor's subcontracts. If the City, in its sole discretion, exercises this right, then Surety waives any rights it may have to cure Contractor's default by performing the work itself or through others and remains bound by its other obligations under the Bond.

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

C. Site Conditions and Inspection

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

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2. You must take field measurements, verify field conditions and carefully compare those field measurements and conditions and any other information known to you with the Contract documents before commencing the Work. No allowance will be made to you for any extra labor and/or materials required due to site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the site. If land surveying Work is required under this Contract, you must have the Work performed by a land surveyor that is licensed as such by the State of Illinois.
3. Differing Site Conditions
  - a. During the progress of the Work, if you encounter subsurface or latent physical conditions at the site differing materially from those indicated in the Contract or unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, including the presence of unanticipated Hazardous Materials, you must promptly notify the City in writing of the specific differing conditions before the site is disturbed and before the affected Work is performed.
  - b. Upon written notification, the City Engineer will investigate the conditions, and if the conditions differ materially from those indicated in the Contract documents, and cause a material increase or decrease in your cost or time required for the performance of any part of the Work, the City will make an adjustment in the Contract Price or Contract Time, or both, and the Contract will be modified in writing accordingly pursuant to Article , "Changes in the Work" and Section ., "Payment for Changes." No Contract adjustment that results in a benefit to you will be allowed unless you have provided the required written notice and allowed City investigation before proceeding with Work. No Contract adjustment will be allowed under this clause for any effects caused on unchanged Work.
4. You must keep on hand at the Work site, for reference, a complete set of Contract documents for the Work, copies of all plans that you furnished, all additional and revised plans furnished by the City and all orders issued to you by the Commissioner that relate to the Work.

**D. Cleaning Up**

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

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

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

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

**E. Contractor's Warranties and Representations**

You warrant and represent that:

1. You have carefully examined and analyzed the provisions and requirements of this Contract; you have inspected the Work site(s) to the extent made available by the City; from your own analysis you have satisfied yourself as to the nature and scope of work, all conditions, any obstructions and requirements needed for the preparation of your bid and the performance of this Contract,

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the general and local conditions, and all other matters that in any way may affect this Contract or your performance; and the time available for the examination, analysis, inspection and investigation was adequate;

2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that you can and will perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract;
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the City, its officials, agents, representatives or employees, has induced you to submit a bid nor have you relied upon any, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, that may be encountered at or on the Work site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions that may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter;
4. You were given ample opportunity and time to review the Contract documents before submittal of your bid in order that you might request an addendum to the Contract documents that might correct or clarify them; you did so review the Contract documents, and every such correction or clarification has been included in this Contract or else, if omitted, you expressly relinquish the benefit of them and are willing to perform this Contract in its entirety without claiming reliance on any such omission or making any other claim on account of the omission;
5. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

7-28-390 Dumping on public way;

7-28-440 Dumping on real estate without permit;

11-4-1410 Disposal in waters prohibited;

11-4-1420 Ballast tank, bilge tank or other discharge;

11-4-1450 Gas manufacturing residue; 11-4-1500 Treatment and disposal of solid or liquid waste;

11-4-1530 Compliance with rules and regulations required;

11-4-1550 Operational requirements; and

11-4-1560 Screening requirements.

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

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

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

6. 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.



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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.

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

**IV. PROPERTY**

**A. Ownership of Property**

The City will be the owner of the Work, including any installed fixtures, upon Final Completion and Acceptance of the Work by the Commissioner.

**B. Ownership of Detailed Specifications and Other Contract documents**

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

- |   |         |
|---|---------|
| a. Contract Plans                       | 10 Sets |
| b. Subsequent Details                   | 10 Sets |
| c. Specifications and Contract drawings | 10 Sets |

2. You must obtain specifications issued by organizations other than the City to which reference is made in the City's documents at your own expense. You must also retain them at the Work site and make them accessible to the Commissioner.
3. The City is the owner of the Project. All documents, data, studies, reports, and instruments of service prepared for or by the City under this Contract are the property of the City. During the

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performance of your Work, you are responsible for any loss or damage to documents while in your possession or the possession of a Subcontractor and you must restore any such document so lost or damaged at your expense.

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

**C. Right of Entry**

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

**D. Damage to City Property**

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

**E. Right to Occupy Before Substantial Completion**

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

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F. Final Completion and Acceptance of the Work

1. Ready for Inspection. When you deem the Work to be complete, you must notify the Commissioner, in writing, that the Work will be ready for an inspection and/or test on a date you specify. The notice must be given at least 15 days in advance of the date. If the Commissioner concurs that the Work will be ready for inspection or testing on the date given, the Commissioner will make the inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve you of your responsibilities under the Contract. You must cooperate in all respects in the scheduling and performance of the inspection.
2. Payment of Remaining Retainage at Final Completion and Acceptance of the Work. Unless expressly stated otherwise in Book 2 or Book 3, the remaining Retainage will be paid when all Work, including Punch List work, is complete and you submit to the Commissioner a sworn affidavit stating the following:
3. All payrolls, invoices for materials and equipment and all other indebtedness connected with the Work for which the City might in any way be responsible have been paid or otherwise satisfied;
4. All waivers of lien required by the Contract have been provided to the Commissioner;
5. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier and others against you, the City, any agents or representatives of the City pertaining to the Work required under this Contract were provided in writing to the Commissioner and have been resolved;
6. The warranties and guarantees required by the Contract have been provided to the Commissioner;
7. All warranties and guarantees are in full force and effect;
8. The surety's written consent, signed by its authorized representative, to final payment being made directly to you is attached to the affidavit;
9. Acceptance of final payment will constitute a general release to the City, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of the City or its agents, representatives, officials and employees relating to or connected with this Contract;
10. Record Documents have been provided to the Commissioner;
11. All other documents requested by the Commissioner have been provided; and
12. Wages paid and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

*FINAL CERTIFICATE*

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

*Signature and Title*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

*Authorized Officer*

*Contractor:* \_\_\_\_\_

*Project:* \_\_\_\_\_

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*The payment of the remaining retainage to Contractor signifies the City's Final Completion and Acceptance of the Work.*

**V. SHOP DRAWINGS, PRODUCT DATA, RECORDS AND SAMPLES**

- A. Contractor's Responsibilities and Submittal Procedures
1. Shop Drawings, Product Data, Samples are part of the Work under this Contract, and if also specified, video tape and/or photographs. You must provide them at your expense to the satisfaction of the Commissioner.
  2. You must submit to the Commissioner those Shop Drawings, Product Data, Samples, video tape and photographs required for the Work involved under this Contract in accordance with the Schedule.
  3. The Schedule must include a schedule of proposed submittal dates. The dates listed in the Schedule must allow sufficient time for review and processing of Shop Drawings or other data by the City and your re-submittal of them, if necessary, before you will need them to complete your performance of the Work they represent under this Contract. No extensions of time will be granted to you because of your failure to have Shop Drawings, Product Data, Samples, video tape and photographs submitted in time to allow for review, re-submittal and final review. You must also submit a separate submittal schedule (in table format), in addition to the Schedule, identifying all Submittals with submittal dates to the Commissioner for review and approval.
  4. You must prepare and submit proper Shop Drawings, Product Data, Samples, video tape and photographs in accordance with your contractual obligations. By submitting them, you represent that you have determined and verified all materials, field measurements, field conditions and quantities, and that you have checked and coordinated the information contained within the Submittal, including your Subcontractors' Submittals, with the requirements of the Work and of the Contract documents. Shop drawings must establish the actual detail of all manufactured and fabricated items and indicate the proper relation to the adjoining Work.
  5. You must date and stamp all Shop Drawings, Product Data, Samples, video tape and photographs. You must also indicate on them that you have reviewed and checked them before submission and found to be in conformance with the Contract. All Submittals must be transmitted to the Commissioner. You must clearly mark each Shop Drawing, Video Tape, Product Data and Sample, in accordance with the following for purposes of identification and record:

***SUBMITTAL IDENTIFICATION***

*Name of Project:*

*Contract Name and Number:*

*Date of Submittal:*

*Submittal Number:*

*Re submittal of Submittal Number:*

*Identification of Deviations from Contract documents:*

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

*Type of Material and Manufacturer:*

*Intended use:*

*Applicable Standards such as ASTM numbers:*

***CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATIONS.***

*Contractor:*

*By: \_\_\_\_\_ Date:*

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6. Shop Drawings must be submitted with accurate dimensions. The Shop Drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Cross-section drawings must indicate minimum clearances and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified before submission for review.
  7. The Commissioner's review and acceptance of Shop Drawings in no way relieves you from responsibility for errors or omissions that may exist in the Work or on the certified Shop Drawings. Where such errors or omissions are discovered, you must correct them at no additional cost to the City. Submittals must be sufficiently complete to allow for proper review. You must submit all Shop Drawings, Product Data, Samples, video tape and photographs to the Commissioner for review with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. You must coordinate Submittals into logical groups or sets to facilitate review of several related items.
  8. Any Submittal that in the Commissioner's sole opinion is not complete and in proper form will be returned to you without review. You must not submit as Shop Drawings duplicates or reproductions of any Contract documents issued by the City.
  9. You must provide Submittals in the following quantities unless a greater number is specified elsewhere in the Contract or required by the Commissioner:
    - a. Shop Drawings: Submit one reproducible and six prints. (Prints must be collated into sets.);
    - b. Product Data: Submit six copies of Product Data;
    - c. Samples: Submit four samples; and
    - d. Video tape and photographs (when required under the Contract)
  10. Before submitting Shop Drawings, Product Data, Samples, video tape and photographs, you must notify the Commissioner in writing of any deviations in the Submittals from the requirements of the Contract. If deviations from the Contract requirements are rejected by the Commissioner or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensable by a time extension.
- B. Review by the Commissioner
1. Submittals will be reviewed by the Commissioner for compliance with the Contract. In reviewing them the Commissioner will not verify dimensions and field conditions. Any such review does not relieve you, your Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract, nor does it relieve you or them from responsibility for (i) errors of any sort in Shop Drawings, Samples and Product Data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract that may not be indicated on Shop Drawings when reviewed. You are solely responsible for any quantities that may be shown on the Shop Drawings. The Commissioner's review of a specific item does not indicate approval of an assembly of which the item is a component.
  2. You must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from the Commissioner with a stamp authorizing Work and/or delivery and installation to be performed, as described in Section , immediately below.
  3. The Commissioner will return Submittals stamped as follows:
    - a. "No Exceptions" means no changes need be made on the reviewed Submittal. You may proceed with the Work for that Submittal. Re-submittal is not required.
    - b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. You may proceed with the Work for that Submittal but only if you

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- incorporate the Commissioner's comments, and/or corrections. Re-submittal is not required, but the corrections must be reflected in the Record Documents.
- c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to proceed with the Work associated with the Submittal. You must resubmit in accordance with the reviewer's comments and/or corrections. Submittals marked in this manner must not be released for fabrication, delivery or construction.
  4. If the Submittal requires revision, you must notify the Commissioner and all pertinent Subcontractors, in writing, that the reviewed set has been withdrawn.
  5. Submittals that require revisions must be corrected and resubmitted to the Commissioner to maintain the approved Schedule, but in no event more than three days after receipt of the Commissioner's comments.
  6. Shop Drawings: After review by the Commissioner, one reproducible stamped by the Commissioner as previously described in Section . above will be returned to you.
  7. Submission and Review of Samples: If a considerable range of color, graining, texture or other characteristics may be anticipated in finished products, you must furnish a sufficient number of Samples of the specified materials to indicate the full range of those characteristics that will be present in the finished products. Any product delivered or erected without submission and review of full-range Samples is subject to rejection. Each tag or sticker must have clear space for your stamps and those of the Commissioner. Notice of the result of the review will be provided to you with one of the stamps indicated in Section . above. Rejected samples will be returned. Accepted samples will be retained by the Commissioner and become the property of the City. Where color samples are required to be submitted, color samples must submitted on the actual material that will finally be installed in the Work. The various parts of the Work must be in accordance with the reviewed and approved Samples.
  8. Product Data: After review by the Commissioner, two sets of Product Data stamped by the Commissioner as previously described will be returned to you.

C. Source of Materials

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

D. Record Documents

At Substantial Completion, you must deliver all Record Documents to the Commissioner, in suitable transfer cases clearly marked "Record Documents," arranged in proper order and indexed. At the discretion of the Commissioner, the Commissioner may make the submission of all Record Documents a prerequisite to reduction of retainage from 5% to 3% under Section , "Retainage," of the Contract.

E. Record Drawings

1. As the Work progresses, you and the Subcontractor for each trade or division of work, under your direction must keep a complete and accurate record of the following:
  - a. Changes between the Work as shown on the Contract drawings and the Shop Drawings indicating the Work as actually installed;
  - b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements that were not accurately located or changed location or elevation from that shown on the Contract drawings; and

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- c. Equipment schedules indicating manufacturers' names and model numbers installed.
  - 2. You must record changes neatly and correctly daily on full size prints of the Contract drawings updated daily. You must keep this record set of Contract drawings at the job site for inspection by the Commissioner. Upon completion of the Work, you must submit a final set of full-size prints to the Commissioner for review and acceptance.
  - 3. At the time Record Drawings are delivered to the Commissioner, you and each Subcontractor must certify, in writing, that the Record Drawings are complete and accurate.
- F. Record Shop Drawings and Product Data
- 1. As the work progresses, you must keep a complete and accurate record of the changes and deviations from the Work as shown on the Shop Drawings and Product Data indicating the Work performed. You must furnish Record Shop Drawings in a form and quantity acceptable to the Commissioner. Record Shop Drawings must be submitted for all items reviewed as Shop Drawings. Record Shop Drawings must be legibly drawn on sheets of mylar or such other medium as directed by the Commissioner. Record Shop Drawings must be submitted on the same size sheets as the Contract Document drawings and include an index of all items.
  - 2. You must furnish 10 record copies of Product Data in loose leaf binders. Loose leaf binders must be subdivided by Submittal numbers and must contain an index of all items.

G. Instructions, Parts List and Operation and Maintenance Manuals

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

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

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

H. Adjustment of Equipment

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

I. Project Account Records

1. Project Data and Records

- a. You and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers and mechanics employed by them in connection with the Work. The record must be open at all reasonable hours to the

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- inspection of the Commissioner and to the Director of Labor of the State of Illinois and his deputies and agents. You also must furnish the Commissioner and the Chief Procurement Officer with certified copies of the payrolls, in accordance with Section .
- b. You must furnish to the Commissioner upon request a written statement, verified by affidavit, giving the names and addresses of all persons, firms and corporations who have up to its date furnished labor or materials in the performance of the Contract and the amounts due or to become due them.
  - c. You and all Subcontractors must furnish the Commissioner with such information as the Commissioner may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution and any other information that the Commissioner may require. You must, on request, furnish the Commissioner with copies of delivery tickets and invoices, in triplicate, covering the expenditures on the Contract.
  - d. You must keep and retain records relating to this Contract and must make the records available to representatives of the City and the federal government, including the sponsoring federal agency, other participating agencies, and the Comptroller General of the United States, at reasonable times during the performance of this Contract and for at least three years after termination of this Contract for purposes of audit, inspection, copying, transcribing and abstracting.
  - e. No provision in this Contract granting the City or the federal government a right of access to records is intended to impair, limit or affect any right of access to the records that the City or the federal government would have had in the absence of such provisions.
2. Audits
- a. You must furnish to the Commissioner and authorized representatives of the federal government such information as may be requested relative to the progress, execution, and cost of the Work. You must maintain complete records showing actual time devoted and costs incurred. You must maintain your books, records, documents, and other evidence, and adopt accounting procedures and practices sufficient to record properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in the connection with the Work for seven years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
  - b. You must deliver or cause to be delivered all documents (including all Deliverables and supporting data, records, graphs, charts and notes) prepared by or for the City under the terms of this Contract to the City promptly, in accordance with the time limits prescribed in this Contract, and if no time limit is specified, then upon reasonable demand therefor or upon termination or completion of the Services under this Contract. If you fail to make the delivery, then and in that event, you must pay the City reasonable damages the City may sustain by reason of the failure.
  - c. The City and the federal government have the right to audit all payments made to you under this Contract. Any payments to you that exceed the amount to which you are entitled under the terms of this Contract are subject to set-off. If the City, in its sole discretion, chooses to conduct an audit either during the performance of the Work or in the five-year period after final payment, each audited calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that you or any of your Subcontractors has overcharged the City in the audited period, the City will notify you. You must then promptly reimburse the City for any amounts the City has paid you due to the overcharges and also some or all of the cost of the audit, as follows:
    - (1) 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



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audited period, then you must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;

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

- d. Your failure to reimburse the City in accordance with above is an event of default under this Contract, and you will be liable for all of the City's cost of collection, including any court cost and attorneys' fees.

3. Confidentiality

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

**VI. ASSIGNMENT**

A. Assignment of Contract by Contractor

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

B. Assignment of Funds or Claims by Contractor

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

C. Assignment of Contract by City

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

D. Assigns

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

E. Requests to Subcontract

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

**VII. QUALITY OF WORKMANSHIP, EQUIPMENT AND MATERIALS**

A. Standard of Performance

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

**B Correction of Work**

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

**C. Materials and Equipment**

1. **Quality of Materials.** Unless otherwise specified in the Contract you must use all new materials for the Project and use them in such a manner as to produce completed Work that conforms with the Contract and is acceptable in every detail to the Commissioner. Only materials that conform to the requirements of these specifications may be incorporated or used in the Work. In the absence of a definite specification, materials must be the best of their respective kind with properties best suited to the Work required.
2. **Materials Inspection and Responsibility.** Before any material is incorporated into the Work, you must submit a "Request for Materials Inspection" to the Commissioner. You are solely responsible for submitting the requests with sufficient time for the City to conduct its inspection. You are not entitled to payment for uninspected materials. The City has the right to inspect any material to be used in carrying out this Contract. The City does not assume any responsibility for the availability of any materials or equipment required under this Contract. By performing any tests or accepting any materials, the City in no way relieves you of any of your obligations or

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responsibility under this Contract. Materials, components or completed Work that do not comply with the Detailed Specifications and other requirements of this Contract may be rejected by the City, and you must replace them at no additional cost to the City. After you receive notice from the City that materials or components have been rejected, you must promptly remove them from the City's premises at no additional cost to the City.

**D. Substitution of Materials**

1. The City will consider your request for substitution in cases of product unavailability or other conditions beyond your control. You must submit each request for substitution separately and each must include:
  - a. Complete data substantiating compliance of proposed substitution with requirements stated in the Contract;
  - b. Product identification, including manufacturer's name and address
  - c. Manufacturer's literature identifying:
    - Product description
    - Reference standards
    - Performance and test data
    - Samples, as applicable
    - Names and address of similar projects on which the product has been used, and date of each installation;
  - d. Itemized comparison of the proposed substitution with product specified that lists significant variations;
  - e. Data relating to changes in the Schedule;
  - f. Any effect of substitution on other parts of the Work, any Subcontractors, or any separate contracts;
  - g. List of changes required in other Work or products;
  - h. Accurate cost data comparing proposed substitution with product specified, including the amount of any net change to Contract Price;
  - i. Designation of required license fees or royalties; and
  - j. Designation of availability of maintenance services, sources of replacement materials.
2. When you make a formal request for substitution make you are warranting and representing that:
  - a. The proposed substitution is equivalent to or superior in all respects to the product specified;
  - b. The same warranties and guarantees will be provided for the substitute as for the product specified; and
  - c. You will coordinate the installation of accepted substitutes into the Work and will make such changes as may be required for the Work to be complete in all respects.
3. If evidence you present does not, in the sole opinion of the Commissioner, provide a sufficient basis for reasonable certainty that the proposed substitution or deviations will provide a quality, result, function, and esthetic appearance, among other attributes, at least equal to that attainable by the specified product, the Commissioner may reject the substitution or deviation without further investigation.
4. The Commissioner will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Commissioner will not approve proposed substitutes as equal to items specified that, in the

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Commissioner's opinion, would be unharmonious, or otherwise inconsistent with the character, quality or design of the Project.

5. You must bear any additional cost, or any loss or damage, arising from the substitution of any material or method for those specified, including the cost for damages incurred by other contractors notwithstanding approval or acceptance of the substitution by the Commissioner, unless the substitution was initiated by the written request or direction of the Commissioner.
6. The investigation review and approval of substitute materials requires a minimum of 30 days beyond that required for specified routine items. No request for a delay or disruption will be allowed whether or not the substitution is granted.
7. Approval by the Commissioner of a substitution of material will be given in a Contract modification as required in Article , "Changes in the Work."

**E. Warranties**

8. You warrant all Work furnished under this Contract against defective materials and workmanship, improper performance and non-compliance with the Contract for a period of one year after the date of Final Completion and Acceptance of the Work ("Warranty Period"), except as otherwise specifically stated in other parts of the Contract or within such longer periods of time as may be provided by law or by the manufacturer, which periods will then become the Warranty Period as applicable. The warranty is automatic, but if the Commissioner so directs, you must confirm it in a writing, including the name of the Project as designated in the Contract, signed by an officer of the company having authority to do so. The confirmation must state:

"This document serves as a one - year written warranty for the Work performed, and material and equipment installed on the above referenced project. This warranty incorporates all provisions of the Contract that refer or relates to the warranty. This warranty begins on \_\_\_\_\_ (date)."

9. Contractor's Warranty Obligations:

Your warranty is in addition to any Manufacturer's warranties. During the Warranty Period, you must repair and replace at your own expense, when so ordered by the Chief Procurement Officer or the Commissioner, all Work that may develop defects whether these defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. The Warranty Period for any equipment or material that is repaired or replaced under the warranty is extended for a period of one year from the date of the last repair or replacement.

10. You must bear all costs associated with any repair or replacement under this section, including removal, material, transportation, and reinstallation.

11. Manufacturers' Warranties

- a. You must:

- ensure that all required manufacturers' warranties pass through to the Department;
- submit all applicable manufacturers' warranties to the Commissioner and ensure that all warranty forms have been completed in the Department's name and registered with the appropriate manufacturers.

- b. Whenever you make repairs or provide replacements under Section , you must provide a manufacturer's warranty for the repaired or replaced Work, if standard with the manufacturer, in addition to your warranty under Section .

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**VIII. PERSONNEL**

A. Competency of Workers

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

B. Supervision and Superintendence

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

C. Contractors Project Personnel

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

D. Key Personnel

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

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

E. Prevailing Wage Rates

1. In the performance of the Work you are fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the U.S. Department of Labor, at the time the Work is performed. If the Department of Labor revises the prevailing rate of hourly wages to be paid for the Work before completion of the Project, the revised rate will apply to this Contract from the effective date of the revision, but the revision will not entitle you to any increased compensation under the terms of this Contract.

2. Davis Bacon Act

You must comply and assure compliance with the requirements of 49 USC § 533 (a), the Davis Bacon Act, 40 USC §§ 276 a through 276a (7), and implementing U.S. DOL regulation, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subjects to the Contract Work and Safety Standards Act)," 29 CFR Part 5. In addition to other requirements that may apply:

You must pay laborers and mechanics performing Contract Work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. You must place a copy of the current prevailing wage determination issued by the U.S. DOL in each solicitation for Subcontractor work under the Project, and must refrain from awarding any affected subcontract until the Subcontractor agrees to the required wage determination .

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

3. Copeland "Anti-Kickback" Act

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

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

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

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

F. "Living Wage"

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

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

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

C. As of July 1, 2012, the Base Wage is \$11.53 per hour. Each July 1st, thereafter the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four (4) divided by two thousand (2000) hours or the current base wage, whichever is higher. At all times during the term of this Contract, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then the Contractor must pay the prevailing wage rates.

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

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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 of Section A through D above do not apply.

**IX. PERMITS AND LICENSES**

A. Contractor Obtains Permits

Whenever the Work under this Contract requires permits to be obtained from the City or other public authorities, you must obtain them and furnish triplicate copies of the permits to the City before the Work covered by the permits is started. You must obtain all the necessary permits and pay the associated fees for the special use of, or removal, alteration or replacement of, certain City-owned facilities and appurtenances such as traffic signs, parking meters, trees, sewers, hydrants, bridges and viaducts that are required for you to perform your Work, and you must abide by all applicable municipal ordinances. You must also furnish copies of these permits to the City before the Work covered is started. Information with regard to the above may be obtained by contacting the appropriate City Departments. See Article below. **NO WORK IS ALLOWED TO PROCEED BEFORE YOU OBTAIN REQUIRED PERMITS.**

B. City Responsibility

The City will obtain permits required from the Metropolitan Water Reclamation District of Greater Chicago, the IEPA, IDOT Division of Water Resources, the U.S. Coast Guard, and the U.S. Army Corps of Engineers.

C. Highway Permit Bond

If you are required to post a highway permit bond, it must remain in effect for at least five years from the date the permit is issued.

**X. COORDINATION WITH OTHER CITY DEPARTMENTS**

A. Water System Work and Usage

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

B. Sewer System Work

If you will be constructing, repairing, adjusting or cleaning any subsurface structure designed to collect or transport storm and/or sanitary waste water, either in private property or in the public way you, through a licensed drainlayer, must obtain a permit issued under this Section . (A licensed drainlayer is a person possessing a current sewer and drain license issued by the Department of Sewers.) Requests for permits must be made at the **Department of Water Management (Sewers and Drains), 333 S. State Street, Room 410, Chicago, IL 60604-3971; 312/747-8117.**

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

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

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You must arrange for sewer inspections at least 48 hours before the start of Work. Inspections may be requested by calling **(312)744-7501 for Plumbing Inspections and (312) 747-7892 for Mason Inspections.**

C. Traffic Control

When it becomes necessary for you to close a street, in whole or in part, you must make arrangements with the **Department of Transportation, Bureau of Inspections, Construction Compliance Section (Public Way Permits), Room 905, City Hall, Chicago, Illinois 60602**, at least two weeks in advance of the closure. The Bureau of Inspections may issue a permit, partially closing a street and setting forth the requirements regarding the furnishing, placing, maintaining and removing of signs, lights and barricades, the furnishing of flaggers, and other provisions for the safe handling of traffic during your use of the street.

D. Construction Work Within Public Way

In order to perform any construction work within the public way, you must provide a letter of credit in an amount as required by the Commissioner, with a minimum amount of \$5,000. In addition, any constructing or reconstructing sidewalks, driveways, curb and/or curb and gutter, alleys or finished concrete pavement requires a permit from the Bureau of Traffic in accordance with Chapter 10-20 of the Municipal Code. If you are not licensed as a sidewalk contractor, before any permits for the work can be issued, you must submit written evidence to the Director of Construction Compliance, Bureau of Inspection, that a licensed sidewalk contractor will perform the Work on your behalf. Contact the **Department of Transportation, Bureau of Inspection, Construction Compliance, City Hall, Room 905, 121 N. LaSalle Street, Chicago, Illinois 60602; (312)744/4656.**

E. Parking Meter Removal and Replacement

The City will remove and reinstall any parking meters as may be required. However, you must pay all fees required by § 9-68-050 of the Municipal Code. You must advise the Department of Revenue, Parking Operations, in writing, of the location and meter number of those meters to be removed, at least five business days before the date needed for the removal. As soon as the date is known, you must also advise the Department of Revenue, Parking Operations, in writing, of the date when meters may be reinstalled. Contact the **Department of Revenue, Street Operation, 2735 North Ashland, Chicago, IL 60614;(312) 742-6978, fax (312) 645-0811; Attention: Manager on Street Parking.**

You must not remove any parking meters without the express written consent of the Commissioner. If you violate this provision, you (a) recognize that the City will suffer damages as a result, including the costs incurred by the City in tracking, retrieving, and repairing damage to the parking meters, costs that are difficult to ascertain, and (b) will be liable for liquidated damages in the amount of \$350 for each parking meter you removed, which amount will be deducted from any amount(s) due or that may become due you. Contact the **Department of Revenue, Street Operation, 2735 North Ashland, Chicago, IL 60614;(312) 742-6978, fax (312) 645-0811; Attention: Manager on Street Parking.**

F. Traffic and Parking Sign Removal and Replacement

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

G. Trees

In accordance with § 10-32-060 *et seq.* of the Municipal Code, you must obtain a permit from the Bureau of Forestry when removing planting, trimming, spraying, or in anyway affecting the general health or structure of trees in the public way. There is no fee for this permit. The permit must be



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obtained from the **Bureau of Forestry Permits Division; 3200 S. Kedzie, Chicago, Illinois 60623; (312/747-2098), fax (312) 747-2178.**

The Bureau of Forestry requires 48 hours notice before starting Work for all activities with the exception of tree planting, which requires two weeks' prior notice. To obtain tree planting permits, two copies of the site plan must be presented to the Bureau for its review and approval. A Bureau representative must also assist in the selection of those trees to be planted in the public way. Tree planting standards and specifications are outlined in the Bureau of Forestry's "Manual of Tree Planting Standards," which is available upon request from the Bureau of Forestry.

H. Bridges, Viaducts, or Publicly Owned Structures

Before construction, any proposed Work within 50 feet of any existing bridge, viaduct, or publicly owned structure will require a permit from the Commissioner of Transportation. There is no fee for this permit. The permit must be obtained from the **Department of Transportation, Bureau of Inspections, Construction Compliance, City Hall, Room 905 121 North LaSalle, Chicago, Illinois 60602; (312/744-4656).**

I. Demolition

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

J. Provisions Relating to River Traffic

When carrying out the contract requires Work to be done over or under the Chicago River, you must comply with marine regulations in every way, so that river traffic may be protected. You must use special care to avoid obstruction of the river. If you find it necessary to obstruct the river at any time, you must advise the Commissioner, through the office of the Chief Bridge Engineer, who will make the necessary inquiries of the proper waterway officials, so that you can schedule your Work without interfering with the movement of vessels. Contact the **Department of Transportation, Bureau of Inspections, Construction Compliance, City Hall, 121 North LaSalle Street, Room 905, Chicago, Illinois 60602; (312/744-4656).**

**XI. SCHEDULE**

A. Time

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

B. Progress Schedule

1. You must begin performance of the Work and to prosecute it with all due diligence, so as to complete the entire Work under this Contract within the Contract Time stipulated, after the date of

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commencement of Work, as specified in the written Notice to Proceed to you. The date for the commencement of Work is not counted as a day, but each day after that, from midnight to midnight, is counted as one day and the last day counted is the date of Final Completion and Acceptance of the Work. You must, when necessary, use overtime, multiple shifts, weekend and/or holiday work to maintain the approved schedule at no additional cost to the City.

2. Except when otherwise specified by the Commissioner, you must provide the progress schedule ("Schedule") for the Work using the Critical Path Method as described in Section , "Critical Path Method (CPM) Schedule," below.
3. The Commissioner's approval of your Schedule is done for the sole purpose of insuring that all CPM scheduling documents you prepare are in conformance with the Contract requirements. This approval does not relieve you of the responsibility for the means, methods, procedures and sequence of the construction process nor does it entitle you to additional funds for completing Work in a period that is less than the Contract Time.
4. Daily Progress Reports: You and all Subcontractors must prepare and submit to the Commissioner daily progress reports on the various parts of the Work, including in the report the number of workers and the classification of the trades involved, equipment used and any pertinent information regarding possible delays in the Work.

C. Construction Operations Plan

1. You must, within 14 days after Notice to Proceed, submit to the Commissioner for review the order of procedure you propose to follow in performing the Work. Work begins only after your proposed order of procedure in performing the Work, the Schedule and the methods, and the structures and equipment to be employed have been submitted to and approved by the Commissioner in writing. The Commissioner requires a reasonable amount of time to examine the procedure and Schedule. As Work progresses, the Commissioner may require changes or modifications in the procedure and Schedule, or in the methods, structures and equipment. If so, as soon as you receive notice from the Commissioner, you must perform further Work only in accordance with the changed or modified procedure and Schedule and the changed or modified methods, structures and equipment, as the case may be, that the Commissioner has approved in writing.
2. The Commissioner, in his sole discretion, may reject or require modification of any proposed or previously approved order of procedure, method, structure or equipment, that he or she considers to be unsafe for the Work under this Contract, or for other Work being carried on in the vicinity, or for other structures, or for the public, or for workmen, engineers and inspectors employed thereon, or that in the opinion of the Commissioner will result in undesirable settlement of the ground, or that will not provide for the completion of the Work within the period of time specified in the Schedule, or that is contrary to any other requirement of this Contract.
3. The City's acceptance or approval of any order or procedure, method, structure, or equipment that you submitted or employ does not in any manner relieve you of responsibility for the performance of the Work, or for the safety of the performance of the Work under this Contract, or from any liability whatsoever on account of any procedure or method you employ or due to any failure or movement of any structure or equipment you furnish. Even if the Commissioner has given an approval, should any structure or equipment installed under this Contract afterwards prove insufficient in strength or fail in any manner whatsoever, the insufficiency or failure in no way forms the basis of any claim for extra compensation for delay, or for damages or expenses caused by the insufficiency or failure, or for an extension of time for completion of the Work, or for material, labor or equipment required for repairing or rebuilding the structure or equipment, or for repairing or replacing any other Work that may have been damaged by the movement or insufficiency or failure of any such structure or equipment, respectively.

D. Critical Path Method ("CPM") Schedule

1. You must format the Schedule to show the proposed starting and completion date for the various stages of the Work, including any float time, and must prepare it in such a way that it can

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be used to plot actual progress against proposed progress. You must update the Schedule and submit it to the Commissioner no less than monthly or as directed by the Commissioner. The Commissioner may request more frequent Submittals. Monthly payment will be withheld for failure to submit updated Schedules. The Schedule must be submitted to the Commissioner in triplicate, one copy of which must be reproducible. A copy of the Schedule must be submitted on a computer diskette in a format acceptable to the Commissioner.

2. You must assure that the Schedule includes, at a minimum:
  - a. Project name, Contract number, Contractor's name, data date and plot date on each separate sheet. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included in them.
  - b. The order and interdependency of activities, indicating the sequence in which you plan to perform the Work; the Schedule must describe and indicate the critical path; and
  - c. Estimates of man hours and/or crew sizes for each activity.
  - d. The dates for:
    - (1) starting and completing the various stages of the Work, including milestones identified by the City in the Contract;
    - (2) placing material orders, delivery of materials and equipment;
    - (3) preparation, submittal and approval of all required submittals to the City;
    - (4) procuring material and equipment furnished by the City;
    - (5) interface activities performed by other contractors or Subcontractors upon which your Schedule depends;
    - (6) all Work activities and field construction operations;
    - (7) equipment installation, testing and balancing.
3. For purposes of the Schedule, "activity" means each logically separate part of the Work defined by an observable start and an observable finish, subject to the following:
  - a. To establish the scope of an activity for Schedule purposes, you must form a single activity from the largest grouping of related operations that permit a continuous and measurable flow of Work;
  - b. The scope of an activity must be small enough to permit a reasonable appraisal of its status or as directed by the Commissioner;
  - c. Each activity on the Schedule must be manpower loaded;
  - d. The activities must be defined so that the average activity has a value of approximately \$25,000, with no activity exceeding \$200,000 without the consent of the Commissioner; and
  - e. Activities of other contractors or companies that must be completed before the start of your Work or portion of Work must be included in the Schedule as milestones and identified with a designation approved by the Commissioner.
4. You must furnish the following information on the Schedule for each activity:
  - a. Activity numbers assigned to the related portions of Work in the format of the project specification division and section numbers. You must submit the activity numbers to the Commissioner for review and approval;
  - b. A description of the activity that is sufficiently detailed to permit an evaluation of your performance of the Work described;
  - c. Duration of the activity in days, unless otherwise noted;

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- d. Responsibility code for each activity that is not performed by you, indicating which Subcontractor, supplier, fabricator, or other contractor is to perform the activity;
  - e. Each activity must be identified with early/late start, early/late finish, and total float;
  - f. A breakdown by monthly node of dollar amount and percentage of Contract Price.
5. In addition to the above, any activity whose start or finish dates has been specified elsewhere in the Contract must be shown as the specified dates in the Schedule.
6. The following information must be furnished on the Schedule as summary items:
- a. The projected total percentage complete, on a monthly basis;
  - b. Anticipated total partial payments, on a monthly basis, including Subcontractor payment breakdown; and
  - c. The projected total manpower requirements, on a weekly basis.
7. Within 14 days after receipt of the detailed Schedule and supporting documents, the Commissioner will either approve the Schedule or reject it with written comments. If the Schedule is rejected, you must submit a revised Schedule within seven days of the date of rejection. The Commissioner's decision to reject the schedule is final and you may not dispute it under Article of the Contract.
8. You must provide prompt written notice to the Commissioner of any events or other changes that may delay or accelerate the Schedule.
9. If you fail to provide the Schedule within the time prescribed and/or updates within the stated time frames, it is an event of default under the Contract, and the Commissioner may, in addition to any other remedies available to the City, withhold monthly partial payments until such time as you submit the required information.
10. Changes to the Schedule
- a. If you propose to make any changes to the Schedule, you must provide the Commissioner notice of the proposed changes, in writing, stating the reasons for the change, identifying each changed activity (including durations and interrelationships between activities) and providing a diskette of the proposed changed Schedule.
  - b. The originally approved Schedule will be the Baseline Schedule. The Commissioner, in his sole discretion, may approve or disapprove the proposed change in the Schedule to the extent that the change does not extend the Contract Time. He will provide a decision in writing to you within 10 days of receipt of your submission. All monthly updates must be plotted against the current revision of the Baseline Schedule.
  - c. If the Commissioner approves the change to the Schedule you must submit a revised schedule incorporating the change(s) within 10 days after approval along with a written description of the change(s) to the schedule.
  - d. Any proposed change that would result in an extension of Contract Time requires a written modification of the Contract pursuant to Section , "Modifications," of the Contract.
11. Updating. The Baseline Schedule will only be changed based on a Contract Modification that extends the Contract duration.
- a. All updates will be plotted against the Baseline Schedule. You must update the Schedule on a monthly basis coincident with the submission of the pay estimate. The updated information must include the Baseline Schedule detail and the following additional information for each activity:
    - (1) Actual start dates;
    - (2) Actual finish dates;
    - (3) Actual activity percent complete;

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

**E. Recovery Schedule**

- 1. You must maintain an adequate work force and the necessary materials, supplies and equipment to meet the current approved Schedule. If you, in the sole opinion of the Commissioner, are failing to meet the approved Schedule, including any Contract milestones, you must submit a recovery Schedule (the "CPM Recovery Schedule"). The CPM Recovery Schedule sets forth a plan to eliminate the schedule slippage (negative float). The plan must be specific and show the methods to achieve the recovery of time, e.g., increasing manpower, working overtime, weekend work, employing multiple shifts. You must bear all costs associated with implementing the CPM Recovery Schedule.
- 2. Upon receipt of the CPM Recovery Schedule, the Commissioner will review it for conformance with the Contract and degree of detail. The Commissioner, within 14 days after receipt of the CPM Recovery Schedule and supporting documents will approve it or reject it with written comments. If the detailed CPM Recovery Schedule is rejected, you must submit a revised CPM Recovery Schedule within seven days after the date of rejection. The Commissioner's decision to reject the CPM Recovery Schedule is final and you may not dispute it.

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3. If you refuse to follow the direction of the Commissioner, the Commissioner reserves the right after seven days' written notice to you, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it and charge the cost to you. The Commissioner's rights under this provision are cumulative to rights under any other provisions of the Contract including the City's rights to terminate for default or to early termination.

F. Time for Completing Punch List

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

G. No Damages for Delay; Extensions of Time

1. Should you be delayed in starting, prosecuting or completing the Work by any act of the City, including a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the City, or by order of the City, or anyone employed by or acting on behalf of the City, or by any cause beyond your control, none of which are due to any fault, neglect, act or omission on your part, then your relief is limited to an extension of the Contract Time that is no greater than the duration of any such delay. The extension of time releases and discharges the City, its employees, officials, agents and representatives from all claims for damages of whatever character, including any claims you may make on account of disruption, changes in sequence, interference, inefficiency, direct or indirect cost or any other causes of delay.
2. Once a delay begins, you must notify the Commissioner of the cause within five days after the delay begins. Consideration of a time extension for events beyond your reasonable control will be made if the delay directly impacts the Schedule for completion of the Work. Events considered to be beyond your reasonable control are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, freight embargoes, or weather significantly more severe than the norm, but only if the listed causes were not foreseeable and did not result from your fault or negligence and only if you took reasonable precautions to prevent delays owing to such causes.

Unless otherwise provided in the Contract, the Contract Time is based on normal weather conditions. An extension is granted for weather significantly more severe than the norm only if you demonstrate to the satisfaction of the City that any delay in the progress of the Work was due to such weather. The basis used to define normal weather will be the "normal" data as compiled by the United States Department of Commerce, National Oceanic and Atmospheric Administration in their most current report entitled "Local Climatological Data, Annual Summary with Comparative Data" for the month for which the time extension is sought. The effects of weather less severe than the norm may be taken into account in considering your requests for time extensions for the effects of more severe weather.

3. No extension of time will be granted under this Section for any delay if you, by your action or inaction, including your fault or negligence or that of your Subcontractors, caused the delay, or for which any remedies are provided under any other provision of the Contract.
4. The grant of an extension of time pursuant to this Section , "No Damages for Delay and Extension of Time," in no way constitutes a waiver by the City of any rights or remedies existing under this Contract, at law or in equity.

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5. You must submit any claim for extension of time in writing to the Commissioner not more than 10 days after the delay begins. If the cause of the delay is continuing, only one claim is necessary, but you must report in writing when the cause for the delay ends within 10 days after it ends. If any claim that you make for extension of time does not comply with these time limits, you have waived your rights to any such extension. Any claim for extension of time must:
  - a. State the cause of the delay;
  - b. Specifically demonstrate the impact of the delay on your schedule; and
  - c. State the number of extension days requested. .
6. After receipt of a timely and properly completed request for a time extension, the City may as it deems appropriate:
  - a. grant a time extension for the entire length of the delay;
  - b. grant a time extension for a portion of the extent of the delay; or
  - c. deny the time extension.
7. If you do not agree with the City's decision on a claim for time extension, you may invoke the Disputes procedures under Article , "Claims and Disputes."

H. Suspension of Work

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

I. Liquidated Damages

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

J. Winter Shutdown

With the approach of the construction season's termination, you must request and receive express written permission from the Commissioner to start new construction operations on any street or any portion of the street in the Project after November 1<sup>st</sup> and before April 15<sup>th</sup> . At the time you submit your written request, it must include a time Schedule designating construction start and completion

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dates within the Project site location. If permission is granted to begin construction, this Schedule must be strictly adhered to. You must take whatever winter protection measures necessary to complete this Work before adverse weather conditions.

If the Work is not performed according to this Schedule due to your fault or negligence, construction time could be extended into the critical season where adverse weather conditions may prohibit continuation of the construction according to the Contract. If this should occur and cause any street or portion of the street and the surrounding Work area to be in an impassable or hazardous condition, thereby creating undue inconvenience and danger to the area residents, you will be assessed a daily monetary deduction, as specified under the Contract item, "Traffic Control & Protection," for failure to correct deficiencies for the number of days that unsatisfactory conditions prevailed.

Regardless, however, of the circumstances of the starting of the street construction and for whatever reason any street or portion of street is found to be in the aforementioned unfavorable condition, it must not be allowed to remain as such throughout the winter shutdown. You must, at your own expense, put the roadway and the contiguous construction area in a condition, approved by the Commissioner, that can safely and adequately serve the needs of the abutting property owners. You must maintain it in this condition until the time that the new construction is permitted to resume and the proposed improvement completed according to the Contract.

**XII. MEETINGS**

**A. Pre-Construction Meeting**

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

**B. Weekly Coordination Meetings**

The Commissioner may conduct weekly coordination meetings at the job site. At a minimum, your superintendent will attend. However, you must arrange for Subcontractors to attend the meetings if expressly requested by the Commissioner. Before the meetings, you must submit your schedule of activities and interfaces for the next four weeks, in the format required by the Commissioner.

**C. Monthly Review Meetings**

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

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



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11. Review of Project Record Document status and content.

**XIII. PAYMENTS**

**A. Contract Price**

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

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

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

**B. Procedure for Monthly Payment Requests and Final Payment**

1. You and the City will agree upon a payment schedule of at least once per month, or more frequently if appropriate or if specified elsewhere in the Contract. The Commissioner will process payment requests pursuant to that agreement if your payment requests, in the Commissioner's sole judgment, are acceptable in form and content, and if the Work for which payment is being requested has been completed according to the terms and conditions of this Contract. All payment requests are subject to correction by the Commissioner and the Retainage provisions of this Contract.
2. In cases where you proceed to perform and complete the Work properly under the Contract, progress payments will be processed on a monthly basis unless the amount earned is greater than \$1,000,000, then payments will be made twice a month. The payment period ends on the monthly anniversary date of the Notice to Proceed.
3. Each monthly payment request must include one original and two copies of the following:
  - a. Certified Statement. You must submit a certified statement (signed by you and notarized) for each payment request. The statement, in the form acceptable to the Commissioner, must list the amount earned by each Subcontractor, supplier and you during the period for which payment is requested.
  - b. Partial Waivers of Lien to Date and Affidavit for Payment. Following your first payment request, you must submit Partial Waivers of Lien from all Subcontractors and suppliers that performed services and provided supplies during the month before your previous payment request. The Partial Waivers of Lien must be in a form acceptable to the City and must identify, at a minimum, the payment request number and time period covered. The Partial Wavier of Lien must be in dollar amount equal to the dollar amount of the services performed or supples provided by the Subcontractor or supplier during the relevant time period. With every payment request, you must also submit an Affidavit for Payment from all Subcontractors and suppliers for whose services or supplies you request payment. The Affidavit for payment must be in a form acceptable to the Commissioner and identify, at a minimum, the payment estimate number, the time period covered, and the total amount invoiced by the Subcontractor or supplier, and the total amount paid to the Subcontractor or supplier to date.
  - c. DBE Utilization Report. A status report of DBE Subcontractor payments, as required by the Contract documents, must be submitted with each monthly invoice in the form required by the City; and

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- d. **Certified Payrolls.** You and all Subcontractors working on the job site must submit three copies of certified payrolls for the payment period to the Commissioner every week until all Work is completed. All payrolls must be identified with Contractor or Subcontractor's name, as appropriate, Contract name and be sequentially numbered. If there are periods of no Work by you or a Subcontractor, you must submit a payroll labeled "NO WORK." The final payroll must be clearly labeled "FINAL." Certified payrolls are required to assure EEO compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Chief Procurement Officer. An employee's address should appear every time his or her name appears on the payroll. You must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a Payroll Summary Report in the form required by the Chief Procurement Officer. You and each Subcontractor must submit the EEO report forms required by the City and U.S. Department of Labor reflecting fully the periods of Work covered by the partial payment request.
- e. In March 2004, the Chicago City Council passed an ordinance requiring the City to report payments to subcontractors and suppliers on the City's website. This ordinance applies to all City-funded, construction-related contracts awarded after June 28, 2004. In order to comply with this new ordinance, contractors meeting this criteria will be required to declare subcontractor payments with each invoice submitted. This reports the intended payments from prime contractors to subcontractors and suppliers from the invoice. The Subcontractor Payment Certification Form can be downloaded from the City's website at [www.cityofchicago.org/finance/subcontractorform](http://www.cityofchicago.org/finance/subcontractorform). The information from this form will be recorded in the City's financial system and posted on the City website.

**C. Payment for Stored Material**

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

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

**D. Retainage**

1. The City will withhold as retainage ten percent (10%) of the invoice sums approved and due to you on the first fifty percent (50%) of the Contract value, including approved change orders.
2. When you have satisfactorily completed 75% of the Project, based upon invoice sums approved and due, the City will release to you an amount so as to reduce retainage to three percent (3%) of the Contract value, including approved change orders. Upon Substantial Completion of the Work, based upon inspection of the Work and acceptance by the Commissioner, the City will release to you an amount so as to reduce retainage to two percent (2%) of the total amount of the Contract, including approved change orders. The balance of the retainage, less any amounts due to City pursuant to the terms of the Contract, will be released to you upon Contract close-out.
3. Notwithstanding the provisions in paragraphs 1 and 2, the City may, at the discretion of the Chief Procurement Officer, decline to reduce the retainage held by the City and/or increase the amounts withheld as retainage from payments to you if the Chief Procurement Officer considers your performance of the Work to be such that the amounts due to the City pursuant to the Contract, including but not limited to damages for unsatisfactory performance and liquidated damages for late performance, exceeds the amount of retainage held by the City.
4. The percentages of any retainage held by you for your Subcontractors' work must not exceed the percentages of retainage withheld by the City from payments to you. Your release of retainage to your Subcontractors must occur on a schedule in relation to the Subcontractors' work on the Project that is at least as frequent as the schedule for the City's release of retainage to you in relation to the Project as a whole, but no later than the release schedule required by the prompt payment provisions in General Condition XXV.C.

**E. Payments to Subcontractors**

See Section ., "Prompt Payment."

**F. Payments Withheld**

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

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

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

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

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

**G. Payment for Changes**

1. **Payment for Changes.** The amount to be paid by the City for changes (either additions, deletions or revisions) in the Work or directions to change the Contract Time (as a result of delay claims, acceleration, or other reason), will be made in accordance with Sections through below. Claims procedures are set forth in Article , "Claims and Disputes."
- a. **Unit Price Basis.** Should the changes in the plans result in an increase or decrease in the quantities of unit priced Work to be performed, you will accept payment as follows:
    - (1) All increases in the Work of the type that appears in the Contract as unit price items will, except as provided in Section , "Proposal Basis," be paid for at the Contract unit

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bid prices. Decreases in quantities included in the Contract will be deducted from the Contract value at the unit bid prices. No allowances will be made for delays or anticipated profits.

- (2) Quantities in excess of 125% of the bid quantities, when the total dollar value of the unit price item (including the original estimated quantities) exceeds 5% of the original Contract Price, will be paid for at a negotiated unit price based on costs that are demonstrated by the Contractor and agreed to by the Commissioner, subject to the approval of the Chief Procurement Officer. The negotiated unit price can be higher or lower than the bid unit price. Quantities in excess of 125% of the bid quantities, when the total dollar value on any unit price item (including the original estimated quantities) does not exceed 5% of the original Contract Price, will be paid at the bid unit price.
  - (3) If the Commissioner and you are unable to agree on a negotiated unit price, the Commissioner will determine a unit price, prepare a Contract Modification with the Work so priced, that you will sign. You may, however, timely dispute the amount of the unit price to the Chief Procurement Officer under Article , "Claims and Disputes." This is the only Contract Modification in which the release language required by Section , "Contractor's Release," will not be included.
- b. **Proposal Basis.** If there are no unit prices for the changed Work, the payment may be based upon a price agreed to by the City and you. The proposal submitted will be a starting point for negotiation between the City and you. You must submit any proposal for consideration for changed Work in writing, breaking down the Work to be done into segments of cost as follows:
- (1) Labor. For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence. You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work. An amount not to exceed 30% of below and an amount not to exceed 10% of below will also be paid to you.
  - (2) Insurance and Payroll Taxes. Cost for property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions and social security taxes on the extra Work, to which an amount not to exceed 10% of the cost of these items will be added. You must furnish satisfactory evidence of the rates paid for the insurance and taxes.
  - (3) Materials. For materials accepted by the Commissioner and used as an integral part of finished Work, you will receive the actual costs of the materials delivered on the job site, including transportation charges that you paid (exclusive of machinery rentals as set forth below), as shown by original receipted bills, to which 15% will be added to the first \$10,000 and 10% for any amounts over \$10,000.
  - (4) Equipment. Number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Schedule of Average Equipment Ownership Expense With Operating Cost" as issued by IDOT, or in the AED Compilation of Rental Rates if equipment is to be rented, for the period that the machinery and equipment are to be used on the Work, to which no percent will be added. Where machinery and equipment are not listed in these schedules, then the rates will be determined by the Commissioner after reviewing all of your available records or other information concerning the expense of operating that type of equipment.
  - (5) Cost for Increase in Performance and Payment Bond. You will furnish the Commissioner written documentation from the surety of the rate applicable for

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additional bonding for this Contract. These rate will be applied to all the changes increasing or decreasing the Contract Price. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the surety, a percentage of the total change, as determined by the Commissioner, will be added or subtracted to cover the increase or decrease of the cost of the bond.

- (6) When Work is to be performed by a Subcontractor, the proposal may include as administrative costs for you an amount not to exceed 5% of the first \$10,000.00 and 1% of any amount over \$10,000.00 of the total approved costs of the Work. The Subcontractor, however, is not allowed any additional markup if it sublets its Work. The use of a Subcontractor requires the approval of the Chief Procurement Officer. All subcontracted costs must be supported by proposals from the Subcontractors performing the Work. The Subcontractor's proposal must be broken down into its various parts of Work as described in items through above, or as required by the Commissioner.
- c. **Time and Material Basis.** If the Commissioner and you cannot agree on a price based on a proposal, the Work will be paid for on a time and material basis. Work that is done on a time and material basis will be paid for as follows:
- (1) Labor. For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence.
- (2) You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work.
- (3) An amount not to exceed 30% of above and an amount not to exceed 10% of above will also be paid to you.
- (4) No payment will be made for labor performed on a time and material basis until you have furnished the Commissioner with itemized statements of the labor cost as follows.
- (a) Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
- (b) Certified payrolls or certified copies of them, pertinent to the Work for which payment is requested. The payroll records will contain the name, address and social security number of each employee, the employees correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. The time and material bills will be audited and corrected against the certified payrolls. Falsification of the certified payroll is an offense punishable by law.
- (5) Insurance and Payroll Tax. For property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions and social security taxes on the time and material Work, you will receive the actual costs, to which 10% will be added. No payment will be made for insurance and payroll taxes until you have furnished satisfactory evidence of the rate or rates paid for the insurance and tax.
- (6) Materials. For materials accepted by the Commissioner and used as an integral part of finished Work, you will receive the actual costs of the materials delivered on the job site, including transportation charges paid by him (exclusive of machinery rentals as set forth below), as shown by original receipted bills, to which 15% will be added to the first \$10,000.00 and 10% for any amounts over \$10,000.00.

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- (7) You will be reimbursed for any materials used in the construction of the Work, such as sheeting, falsework, form lumber, burlap, or other materials for curing, etc., that are not integral part of the finished Work. The amount of reimbursement will be agreed upon in writing before the Work is begun and no percent will be added. The salvage value of the materials will be taken into consideration in the reimbursement agreed upon.
- (8) No payment will be made for material cost until you have furnished itemized statements of the material costs, which must include:
- (a) Quantities of materials, prices, and extension;
  - (b) Material transportation costs supported by receipted invoices; and
  - (c) Receipted invoices for all materials used. However, if materials used on the time and material Work are not specifically purchased for the Work but are taken from your stock, then in lieu of the invoices, you will furnish an affidavit certifying that the materials were from your stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to you. The price quoted for the material must be reasonable and acceptable as per the normal industry practice.
- (9) Equipment. You will be paid for all machinery and equipment (other than small tools as currently defined by the Illinois Department of Transportation) used on the Work in accordance with the latest revision of "Schedule of Average Annual Equipment Ownership Expense with Operating Cost," as issued by the Illinois Department of Transportation, for the period that the machinery and equipment are in use on the Work, to which no percent will be added. Where machinery and equipment are not listed in this schedule, the rates will be determined by the Commissioner after reviewing all your available records or other information concerning the expense of operating that type of equipment. Where idle time for equipment is authorized by the Commissioner, it will be paid at a rate not to exceed 50% of the rates described above.
- (10) When equipment is rented, you will receive actual rental cost as shown by original receipted bills to which 5% will be added.
- (11) No payment will be made for equipment unless designations, dates, daily hours, rental rates, and extensions for each unit of machinery and equipment are shown on the itemized statement of time and material Work.
- (12) Bond. The City will pay you the actual increase in cost of your performance bond. You will furnish from the bonding company written documentation of the rate or rates applicable for additional bonding for this Contract. These rate/rates will be applied to all the changes increasing or decreasing the Contract value. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the bonding company, a percentage of the total change, as determined by the Commissioner, will be added or subtracted to cover the increase or decrease of the cost of the bond.
- (13) When Work is performed by Subcontractor, you will receive as administrative costs an amount equal to 10% of the first \$10,000 and 5% of any amount over \$10,000 of the total approved costs of the Work. The Subcontractor, however, is not allowed any additional markup if it sublets its Work. The use of a Subcontractor will require the approval of the Chief Procurement Officer. All subcontracted costs must be supported by invoices from the Subcontractors performing the Work. The Subcontractors' invoices must be submitted in the form described in items (1) through (4) above.
- (14) Documentation. For additional Work performed on a time and material basis you will each day submit to the Commissioner detailed and complete records of the labor,

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material, equipment, and other costs relating to any force account Work performed on the day the Work is performed. You and the Commissioner will sign these daily extra Work reports.

(15) Base Contract Work on a Premium Time Basis.

- (a) For Contract Work performed outside of regularly schedule working hours as defined by the Contract, premium time costs will be paid, only if expressly directed in writing by the Commissioner before you begin the Work. Compensation, when authorized, will cover only the direct cost of the premium portion of the time involved and will be without any charge for insurance. No payment will be made for union fringe benefits on the premium portion of the time unless expressly required by union agreement. Taxes that are attributed to the premium portion of the time will be paid. If you charge taxes, the Commissioner may require you to supply verification that the employees' Social Security Tax, federal Unemployment Tax, and State Unemployment Tax limits have not been exceeded.
- (b) An amount equal to 7% of the sum of the premium portion of the work plus taxes will also be paid to you to cover job site general conditions, overhead, and profit. All indirect costs are considered part of the overhead, including supervision, engineering, and other technical personnel.
- (c) If you enter into a subcontract, you will be allowed an additional 2% of the Subcontractor's premium time billing to cover your supervisory and related expense on subcontract operations. The Subcontractor is not allowed the additional 2% if it sublets its Work.
- (d) You must keep daily work reports for the premium time hours and sign them daily. The reports must indicate the time of day when the Work was performed and wage rate differential that will be charged. Billings must reflect hours reported on daily work reports.

- d. **Changes on Lump Sum Contracts or Lump Sum Items in Unit Priced Contracts.** All increases or decreases in the Work that is listed in the approved schedule of values will be priced, for the purpose of any change, based on the amounts stated for the Work in the approved schedule of values.
- e. **All invoices for changed work.** You must submit all invoices for changed work within 45 days following completion of the changed work. Failure to provide a complete invoice for the changed work within that period, will authorize the Commissioner, subject to the approval of the Chief Procurement Officer, to determine the final amount for the Contract Modification that may be awarded without your signature.
- f. **Miscellaneous.**
  - (1) For the purposes of this Section, any Subcontractor that employs field labor and performs Contract Work on the job site is defined as a "Field Labor Subcontractor." (This definition excludes suppliers/deliverers of materials.)
  - (2) When the extra Work involves only supply of material without any field labor at the job site, the supplier, for the purposes of this Section, will be considered a "Materials Subcontractor" and the mark up specified in Section, "Materials," will apply.
  - (3) Expenses incurred by the City. Upon written request of the Commissioner, you will pay the bills related to the Work that are the responsibility of the City. You will be reimbursed for the actual amount paid out to which will be added a markup as specified in Section above.



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H. Night, Sunday and Holiday Work

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

I. Acceleration

1. If progress falls behind the approved schedule, the Commissioner may direct and authorize you, in writing, to perform premium time work as indicated in TIME OF COMPLETION in the Proposal section of the specifications. The City will pay you NO additional compensation for such premium time work, and the cost incurred for inspection and testing during the premium time work will be considered as "extra" inspection, for which you must reimburse the City as described in Section , "Materials and Equipment Testing and Inspection."
2. If conditions are encountered where you are specifically directed and authorized in writing by the Commissioner to perform premium time work, on the original contract, to advance an already established completion date of an event or the project, or project milestone, you will be compensated in accordance with Section.
3. When such premium time Work is performed by an approved Subcontractor, you will receive a markup as specified in Section.

J. Payroll Canvass Reports

**XIV. CHANGES IN THE WORK**

A. City's Right to Change Work

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

B. Contractor's Request

You must submit your claim for adjustment of the Contract Price and/or the Contract Time for the revised Work in accordance with the procedures under Section . and the payment provisions under Section \_\_\_\_

C. Contract Modification

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

D. Contractor's Release

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

E. Performance of Changed Work

You must promptly proceed with any changes in the Work or Contract Time as directed by a written order of the Commissioner ("Field Order"), in accordance with Section, "Owner's Right to Change Work," with or

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without any Contract Modification. Your refusal or failure to proceed promptly with the changed Work as directed constitutes an event of default under the Contract. No change to the Work by you as directed by the Commissioner will operate to invalidate the Contract or release your surety.

F. Change Claims and Disputes

The procedures set forth in Article , "Claims and Disputes," apply.

XV. **TESTING & INSPECTION**

A. Material, Inspection and Responsibility

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

B. Inspection of the Work

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

C. Materials and Equipment Testing and Inspection

1. You must provide the Commissioner sufficient notice of placing orders to permit tests to be completed before the materials are incorporated into the Work. You must afford such facilities as the Commissioner may require for collecting and forwarding Samples and making inspections and tests. All Samples must be furnished without charge to the Commissioner. You must not make use of or incorporate into the Work the materials represented by the Samples until tests

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have been made and the materials have been found to be in accordance with the requirements of the Contract.

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

**D. Testing Laboratory Labels**

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

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

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8. American Research Lab (ARL)

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

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

**XVI. CONTRACTOR PRACTICES AT SITE**

A. Cooperation Among Contractors

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

B. Protection of Persons and Property

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

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

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

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

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

If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City, you must erect and maintain such barriers, and, during the night time, such

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lights as will effectively prevent the happening of any accidents or damage to life, limb, or property in consequence of such excavation or occupation of such street, alley, or public grounds. You are liable for all damage occasioned by you, your agents, employees or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and you must indemnify the City pursuant to Article , "Insurance, Indemnity and Bonds."

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

Materials and equipment necessary for the performance of the Work may only be placed, stored or allowed to occupy any space in public streets or alleys upon the written consent of the Commissioner. It is the City's intent that the operations under this Contract are conducted as far as practicable without interference with the public use of streets and alleys. All materials or equipment used in the performance of the Work must be placed so as not to impede traffic on streets and alleys adjacent to the site of the Work, and to allow free access to all fire hydrants, water valves and manholes that are a part of electric, telephone and telegraph conduit lines, fire alarms and police call boxes in the vicinity.

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

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

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

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

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

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

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3. Utilities Outside the Limits of the Work. You must protect and maintain City-owned water lines, sewers, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances that are located entirely outside the limits of the Work in a satisfactory manner until the completion of the Work. Whenever in the performance of the Work it is necessary, because of the nature of the Work or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair such City-owned structures located entirely outside of the excavations, you must notify the appropriate City department to perform the Work, and must cooperate with the department in preserving service. You must reimburse the appropriate City department for the cost of performing the Work at no additional cost to the City under the terms of this Contract.
4. Utility Relocation and Continuance of Service Plan. You must prepare a Utility Relocation and Continuance of Service Plan, identifying procedures, locations, time frames and affected agencies and private owners. The Plan must be submitted to the Commissioner for review within 14 days after the Notice to Proceed.
5. Cooperation with Utilities. You must cooperate with all utility companies involved in connection with the removal, temporary relocation, reconstruction, or abandonment by these agencies of all services or facilities owned or operated by them within the limits of the Work.
6. Work Performed by Others. The Work must be performed with a minimum of interference to street traffic in the area. You must coordinate your Work with that of other City contractors, with contractors employed by adjacent property owners, and with contractors employed by any other party or parties for work on utilities to insure the best progress of the Work as a whole.
7. Preservation and Protection of City Standard Bench Monuments and Survey Controls. You are responsible for the preservation and protection of all City Standard Bench Monuments, in accordance with the provisions of § 10-4-220 of the Municipal Code and Article 105.09 of the Standard Specifications, and as directed by the Commissioner. Any survey control point that you disturb or remove you must replace or reestablish to the satisfaction of the Commissioner, at no additional cost to the City. **DAMAGE TO ANY OF THE CITY STANDARD BENCH MONUMENTS WILL RESULT IN YOUR BEING PROSECUTED TO THE FULL MEASURE OF THE LAW.** The Department of Transportation will pursue the matter of compensation for damages incurred by the City resulting from your actions or your failure to act during the execution of Work on this project.
8. Protection of Streets and Traffic. You must provide all necessary barricades, signs, flags, lights and reflectors. You must assure that vehicular and pedestrian traffic on all streets, including adjacent streets, bridges, overpass structures and ramps, are maintained during the performance of the Work in accordance with the requirements of the Contract.
9. Temporary Restoration of Trench Cuts. Failure to maintain the temporary restoration of trench cuts, which causes the surrounding work area to be in an impassable and/or hazardous condition thereby creating undue inconvenience and danger to area residents is an event of default under this Contract.
10. Temporary Barriers, Signs, Lights and Flaggers. You must furnish, relocate and remove portable barricades and lights, collision protection, temporary signs (including traffic and project signs) and supports as directed by the Commissioner; and furnishing all necessary flaggers and other protection necessary for the maintenance of traffic flow in a safe and orderly fashion, as required by Article 107.14 of the Standard Specifications, except as otherwise specified in the Contract.
11. You must maintain, repair or replace all damaged or destroyed appurtenances referenced in the immediately preceding paragraph throughout the life of the Contract. Maintenance includes cleaning of the barricades and traffic signs by means of clean water. Flaggers must be provided whenever circumstances warrant.

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

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

C. Protection of Streets, Alleys and Public Grounds

1. When excavating or occupying any street, alley or public grounds of the City, you must erect and maintain temporary barriers and, during the night time, lights that will effectively prevent accidents or damage to life, limb or property in consequence of the excavation or occupation of the street, alley or public grounds. You are liable for all damages as a result of the excavation or occupation of any street, alley or public grounds, or by the carelessness of you, your subcontractors, agents, employees or workers and must indemnify and hold harmless the City against all judgments rendered against it by reason thereof.
2. Construction Period Traffic Management Plan. You must prepare a Construction Period Traffic Management Plan consistent with the requirements of the Contract. The Plan must be submitted to the Commissioner for review within 14 days after award of the Contract. You must comply with all applicable federal, state and local requirements and coordinate with Chicago Department of Transportation, Bureau of Traffic and Illinois Department of Transportation. You must also comply with the following requirements:
  - a. Construction staging segments must be kept as short as feasible;
  - b. Lane closure must be kept to a minimum, and at least one lane must remain open to vehicular traffic;
  - c. Intersections must remain open to traffic in both directions at all times;
  - d. Detours must be provided in streets as necessary and approved by the Commissioner;
  - e. Signage plans must be developed and implemented for all approved detours;
  - f. Coordinate adjustments required for traffic signals; and
  - g. Allow for emergency access at all times.

D. Protection of Existing Trees in the Right of Way

1. In accordance with the provisions of Chapter 10-32 of the Municipal Code you must protect all trees and shrubs at the construction site from damage. You must restore all damaged parkways to their original condition and repair or remove and replace any trees and shrubs damaged as a result of construction activity (as determined by the Department of Streets and Sanitation, Bureau of Forestry) at your expense. If any trees or shrubs damaged by construction activity must be removed and replaced, and trees or shrubs of comparable size, type, and value are unavailable or the time for planting is unsuitable, the City will charge you their appraised value determined as provided under § 10-32-200 of the Municipal Code, which amount the City will deduct from amounts due you, or, if no amounts are due, then you must promptly pay the City the amounts determined. Any tree greater than 4" D.B.H. that is permanently damaged due to the construction project and not originally marked for removal must be replaced with a new tree as identified by the Bureau of Forestry and must have a minimum of 4" caliper B&B. Any damaged tree smaller than 4" caliper measured 6" above the ground must be replaced in kind, inch for inch.
2. You must install a **protection barrier or temporary fence** of at least 1.2m (4 feet) in height around each tree to be *protected and preserved*. *The tree protection* must be installed before the actual construction starts and maintained for the duration of the project.

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

The protection barrier must be constructed of orange snow fencing securely fastened to fence posts spaced a maximum of **1.5 m (5 feet)** on center. Posts are 1.8m (6 feet) in length with 61

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cm (2 feet) set into the ground and 1.2m (4 feet) extending above ground. The fencing must be attached to the post with a minimum of four nylon locking ties evenly spaced at each post.

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

**Trees located in Tree Pits:** Where trees are located within Tree Pits, the temporary fencing should be installed at a minimum distance of the inside dimension of the Tree Pit opening with one stake at each corner of the opening. (See Illustration 1.)

**Trees located in Parkways or Boulevards:** (See Illustration 2.)

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

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

**Medium (10"to 15" D.B.H.):** Minimum of ten (10) feet from face of tree along the parkway length. In the dimension bordered by the public sidewalk or curb, the fencing must be the width of the grass parkway with a maximum offset of one foot from back of curb or edge of sidewalk. In no case must the closure be less than two feet from the centerline of the tree.

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



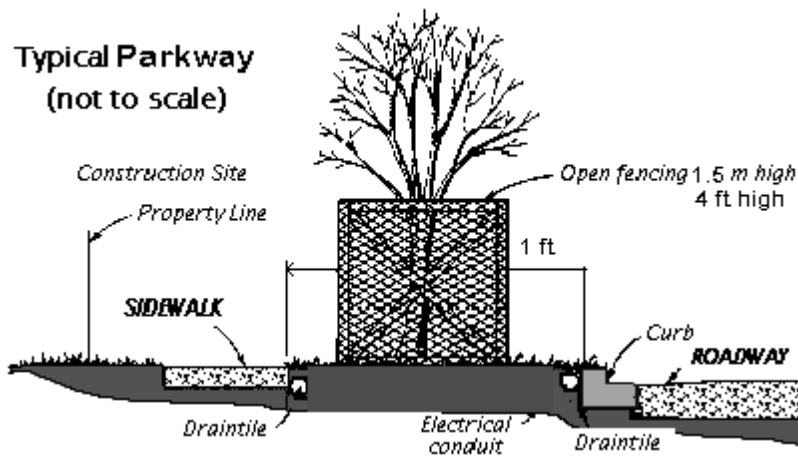
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**ILLUSTRATION 1 :**

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ILLUSTRATION 2 :



E. Care of Existing Structures and Property

1. Property Access Maintenance Plan. You must prepare a Property Access Maintenance Plan consistent with the requirements of the Contract. The plan must be submitted to the Commissioner for review within 14 days after award of the Contract. You must comply with all

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applicable federal, state, and local requirements. You must also comply with the following requirements:

- a. Maintain vehicle and pedestrian access to properties;
  - b. Maintain pedestrian access on both sides of all streets;
  - c. Provide access walkways to all buildings and businesses;
  - d. Sidewalks must remain open to the maximum extent possible;
  - e. Provide temporary relocation of access, where required;
  - f. Provide advisory and temporary signs for pedestrian and vehicle access changes and reroutings; and
  - g. Coordinate delivery locations and timing.
2. Before doing any Work adjacent to or on the site of any buildings or other structures adjoining or in the line of the Work to be performed under the Contract, you must supply written notice of it to the owner or owners that the Work is to be done, and must cooperate with the owner(s) in the maintaining, removing, relocating, rearranging or adjusting wherever necessary, of all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment, or other appliances and structures located in any portion of the streets, public areas, highways and easements to be occupied or used during the prosecution of the Work.
3. Wherever in the performance of the Work it is necessary to remove, reconstruct, relocate, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewers connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the Work as shown on the plans, or ordered by the Commissioner you must perform the Work necessary to remove, reconstruct, relocate, rearrange, adjust or repair those structures and appurtenances, unless otherwise noted on the plans.
- a. The Commissioner has the right to determine, at his sole discretion, the method of Work to be carried on to interfere as little as possible with the normal conduct of business in or around the portions of the building or structures in use.
  - b. The building or structures may be in full time use and operation and will continue in normal use during performance of the Work. Building facilities, including heating, ventilation, and air conditioning, lighting and plumbing, will not be interrupted in the occupied areas, except as required for making connections to power sources as specified below.
  - c. You will serve written notification to the Commissioner requesting any anticipated interruption in facilities at least two weeks before disruption of services. You must provide any temporary facilities deemed necessary by the Commissioner due to a disruption of services. The Commissioner, in his sole discretion, will determine the procedures, times of day and dates you may accomplish the Work and may reject or modify your request.
  - d. Storage of all material and/or equipment must be in areas approved by the Commissioner, in a manner to minimize interference with the normal conduct of business in or around the occupied portions of the building and vehicular areas.
4. You must not perform Work on City-owned water mains, connections and appurtenances or on any City-owned electrical conduits, cables, vaults and appurtenances unless the City has abandoned the structure and the Commissioner has authorized the Work or the Work is included in the Contract. But, you must adjust City-owned water manholes and electric manholes that are shown as "to be adjusted" on the plans.
- a. You must protect and maintain in a satisfactory manner City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances that are located entirely outside of the neat lines of the excavation as shown on the plans or as ordered by the Commissioner, until the completion of the Work under the

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- contract. Whenever in the performance of the Work under the contract it becomes necessary because of the nature of the Work required by the contract or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair those City-owned structures located entirely outside of the excavations, you must notify the appropriate City Department to perform the Work, and must cooperate with the Department in preserving service in or through them. You must reimburse the appropriate City Department for the cost of performing the Work, and the cost must be included in the various Contract prices.
- b. The City will support, protect and maintain or remove, replace, relocate, rearrange, adjust or repair, both inside and outside of the excavations, all City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances, any part of which are located inside of the neat lines of the excavations as shown on the plans or ordered by the Commissioner, without cost to you. But you must adjust those City-owned water manholes and electric manholes that are shown as "to be adjusted" on the plans. Whenever in the performance of the Work under the contract it becomes necessary to support, protect, maintain, remove, replace, relocate, rearrange, adjust or repair such City-owned structures any part of which is located inside of the excavations, you must notify the appropriate City department to perform the Work and must cooperate with the department in preserving service in or through them.
  - c. With the exception of the City-owned water mains, connections and appurtenances and the City-owned electric conduits, cables, vaults and appurtenances described above, and with the exception of City-owned structures that are to be removed or otherwise Worked upon as part of the requirements of the Contract, you must support, protect, maintain or relocate and rebuild all poles, trees, shrubbery, fences, sewers, pipes, conduits, cables, wires, manholes, tunnels, buildings, subways and other City-owned structures that pass through and are located within the excavations or that are adjacent to the Work to be constructed under the Contract during the construction and until the completion of the Work under the Contract.
5. You must notify and cooperate with the owner (s) of all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment or other appliances or structures located in any portion of the streets, public areas, highways and easements that are to be occupied or used during the construction of the Work specified under the Contract in maintaining, removing, relocating, rearranging or adjusting wherever necessary.
- a. Wherever in the performance of the Work specified under the Contract it becomes necessary to remove, replace, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the excavations as shown on the plans or ordered by the Commissioner, you must perform the Work necessary to remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances. The cost of performing the Work must be included in the Contract price.
  - b. Wherever in the performance of the work specified under the contract it becomes necessary to support and maintain City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances or wherever it becomes necessary as a result of your methods of construction during the Work under the contract, to remove, replace, relocate, rearrange, adjust, or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances (other than those specified in the last preceding paragraph) you must perform the Work necessary to support, maintain, remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances, and you must bear the cost of the Work without any additional compensation for it.
  - c. It is the intention of the specifications that you include in the appropriate Contract Price or prices, all necessary cost and expense of supporting, maintaining, removing, replacing, relocating, rearranging, adjusting or repairing all City-owned appliance and structures (other

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- than City-owned water mains, connection and appurtenances and City-owned electrical conduits, cables, vaults and appurtenances described in Section ), encountered in or affected by the Work, and that you must also include in the price or prices all necessary cost and expense of removing structures that have been or will be abandoned by their owner or owners and that are necessary to be removed in order to construct work under the Contract, but you must not include in the price or prices the cost or expense of supporting, maintaining, moving, replacing, relocating, rearranging, adjusting or repairing those appliances or structures that are not owned by the City and are not abandoned by their owner or owners, except as may be otherwise specified below in this Section.
6. You must take all reasonable precautions for the protection of buildings, railroad tracks, street railway tracks and appurtenances, and other appliances and structures not owned by the City.
  7. You must determine the methods to be employed, the procedure to be followed, the equipment, plant, falsework, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract and the approval of the Commissioner. Only adequate and safe procedures, methods, structures and equipment must be used.
  8. You must provide drawings and calculations for all equipment, falsework, shoring, bracing and other temporary structures required for the Work, designed, signed and sealed by an Illinois licensed structural engineer. You must submit copies of all such drawings and calculations to the Commissioner.
  9. Field Check of Dimensions, Cutting and Patching. Where the Work connects to existing structures or appurtenances, you must take complete field measurements affecting all Work under this Contract and are solely responsible for the proper fit between the Work and existing structures or appurtenances. You must perform all cutting, patching, or fitting of Work that may be required to properly fit together the several parts of the Work and the existing structures or appurtenances.
  10. Contractor's Layout of the Work. You are responsible for the correct lay-out and accurate fitting of all parts of the Work. You must furnish at your own expense all labor, materials and other expenses necessary for, or incidental to, the setting and maintaining of lines and grades (exclusive of the Work of establishing the original reference base line and bench marks that will be performed by the City). The City will not make separate payment to you for the cost of any of the Work specified in this Contract. The cost is included in the Contract unit or lump sum prices.
  11. Salvage of Materials. When city-owned property such as cast iron manholes and catch basin frames and covers, inlet boxes and gates, and other roadway appurtenances are to be removed and are not to be reused in the Work, you must securely store them for possible use by the City. You must take care to prevent damage in your handling of these appurtenances. You must deliver all items identified by the City for reuse to a location designated by the Commissioner and must legally dispose of the remaining items.
  12. Wherever basements of buildings, subsidewalk vaults, tunnels, sewers, water, gas, telephone, telegraph, electric or other pipes, conduits, cables, wires, manholes, vaults, steam and street railway tracks or other similar structures and appliances not owned by the City are in or cross the excavations for structures to be built under this Contract, you must notify the owner or owners of the structures and appliances to support, move, rearrange or abandon them, and cooperate with the owner or owners of the structures and appliances in preserving the service or services provided by the structures and appliances, except as may be otherwise specified or provided in the Contract. If you have complied with the above requirements and has been notified by the owner or owners of the structures and appliances that any of them have been abandoned, or lacking such notice, if you have made all investigations and has found that any of the above structures or appliances have been abandoned by their owners and if the removal of any such abandoned structure or appliance is necessary in order to construct the Work, you must remove them at no additional cost to the City.

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

**F. Precautions and Safety**

1. You must take any precautions that may be necessary to render all portions of the Work secure in every respect, to decrease the liability of accidents from any cause and to avoid contingencies that are liable to delay the completion of the Work. You must furnish and install, subject to the approval of the Commissioner, all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of engineers and inspectors during the performance of the Work. You are required to conduct your Work so as not to unnecessarily obstruct the activities of other contractors who also may be engaged in work on this or any other project.
2. Although the Commissioner may observe the performance of the Work and reserves the right to give you opinions and suggestions about safety defects and deficiencies, the City is not responsible for any unsafe working conditions. The Commissioner's suggestions on safety, or lack of it, will in no way relieve you of your responsibility for safety on the Work site. You have sole responsibility for safety and the obligation to immediately notify the Commissioner of all accidents.
3. Precautions must be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes must be observed.
4. You must provide completely equipped first aid kits readily accessible at all times on the Work site. You must designate an appropriately trained individual on each shift to be in charge of first aid.
5. You must provide at appropriate locations fire extinguishers or other fire protection equipment that comply in all respects with the Municipal Code and NFPA standards. You must maintain this equipment in proper operating condition at all times and must cause the equipment to be inspected by all appropriate agencies as required by law, but in no event less than monthly. You must comply with the Municipal Code requirements on the use of standpipes, hoses and other fire protection equipment.
6. Only such materials and equipment as are necessary for the construction of the Work under this Contract must be placed, stored or allowed to occupy any such space at the site of the Work. Not

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more than one day's supply of flammable liquids, including oil, gasoline, paint, or solvent is permitted to be kept on hand at any one time. If gasoline, flammable oils, other highly combustible materials or compressed gas cylinders are to be stored at the site, they must be stored in a secure manner, in compliance with all applicable laws, ordinances and regulations, and all storage places must be clearly marked. The written consent of the Commissioner is required for such storage. That consent in no way limits your liability for the materials.

7. You must prohibit all lighting of fires about the premises and all smoking in restricted areas where posted with "NO SMOKING" signs and must diligently enforce this prohibition. You must furnish and post "NO SMOKING" signs. You must not permit any debris or waste materials to be burned at the Work site.

**G. Health, Safety and Sanitation**

1. Clean-Up. During construction, you must keep the Work site and adjacent premises as free from material, debris and rubbish as practicable. Haul roads, streets and public areas must be swept daily. Before Final Completion and Acceptance of the Work, you must remove from the Work site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades and signs and must restore the site to the same general conditions that existed before the commencement of the Work. The cost of final clean-up is included in the unit prices for the various items, or included in the Contract lump sum price, as the case may be. You must clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt and any other foreign materials deposited or accumulated on any portion of your Work, or existing facilities and structures, due to your performance of the Work.
2. Snow and Ice Removal - You must remove snow and ice that may impair progress of Work, be detrimental to workers, or impair trucking to and from points of delivery at the Work site.
3. Glass Breakage - You must replace all glass broken or damaged during construction at no additional cost to the City. You must promptly remove all broken glass from the Work site.
4. Noise and Vibration Control - All equipment, vehicles, and Work under this Contract must be conducted in accordance with the City Building Code, Chapter 11-4 of the Municipal Code "Environmental Protection and Control," Article VII- Noise and Vibration Control, so as to cause a minimum of noise, vibration and inconvenience to the activities of the occupants of property and buildings in the vicinity of the Work. When the Commissioner, in his sole discretion, determines that your operations constitute a nuisance, you must immediately proceed to conduct your operations in a manner that abates the nuisance. You must provide all measures, including engine and exhaust mufflers, acoustic casing enclosures, maintaining equipment, or physical barriers along the edges of the construction zone, required to minimize noise and vibration. Noise and vibration levels may be monitored by the Commissioner.
5. Health and Safety - You must comply with the requirements of the Illinois Health and Safety Act, 820 ILCS 225/.01 et seq., and the rules and regulations promulgated under it by the Director of Labor for the State of Illinois, which are on file with the Illinois Secretary of State.
6. Whenever a federal OSHA Compliance Officer arrives at the work site, you must notify the Commissioner immediately. At the conclusion of the inspection, any findings are reported to the Commissioner. Copies of any citations issued and related documents must be submitted to the Commissioner.
7. You must maintain the following records and make available to the Commissioner for review: (i) all records required by OSHA, including the accident log, Fed/OSHA #200, and posting of the prescribed OSHA poster; (ii) log of safety activities, accident investigation, employee instruction, training, tool-box meetings, and any other pertinent information; and (iii) Material Safety Data Sheets (MSDS) as required for each material you have used at the Work site.
8. You must enforce among your employees such regulations in regard to cleanliness and the disposal of garbage and wastes that are necessary for their health and tend to prevent the inception and spread of contagious and infectious disease among them. you must provide an

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ample supply of suitable, pure drinking water, and must take such means as the Commissioner may direct to effectively prevent the creation of a nuisance on any part of the Work site or adjacent streets or property. You must construct and maintain necessary sanitary conveniences for the use of the laborers on the Work, properly secluded from public observation, in such manner and at such points as be approved, and their use must be strictly enforced. Whenever manholes have been used for sanitary proposes, they must be thoroughly flushed and cleaned when no longer needed.

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

H. Hazardous Operations and Security

1. During construction, all cutting or welding operations must be carried out with all precautions taken to prevent fires resulting from sparks or hot slag. Extreme care must be exercised to determine that sparks or embers do not fall into any combustible materials, even if such material is stored on lower floors. Sheet metal wind screens must be provided around the lead-melting furnaces whether the Work site is enclosed or not. Portable fire extinguishers must be provided at and below all locations where cutting or welding or melting operations are being performed or, if those operations are extensive, a hose from the stand pipe system or fire hydrant must be placed nearby. You must obtain special permission from the Commissioner of Water and pay all associated connection fees.
2. No welding, flame cutting, or other operations involving use of flame, arcs, or sparking devices, will be allowed without adequate protection. All combustible or flammable material must be removed from the immediate working area. If removal is impossible, flammable or combustible materials must be protected with fire blankets or suitable non-combustible shields to prevent sparks, flames or hot metal from reaching flammable or combustible materials. You must provide necessary personnel and equipment to control incipient fires resulting from welding, flame cutting, or other sources involving use of flame, arcs, or sparking devices.
3. You must immediately report any concentration of gas fumes, and you are responsible for clearing the area and notifying the Commissioner and the Utility Company. All operations in the area must be suspended until the source of the fumes has been located and corrected.
4. You must arrange for the installation of necessary fire protection lines and equipment as required by the Chicago Fire Department and as necessary to properly protect the Work site. Permanent fire protection facilities may be used for this purpose as soon as they are installed, tested and approved by the Commissioner for temporary use.
5. Salamander heaters or similar forms of uncontrolled heaters must not be used except with the special written permission of the Commissioner and City fire marshal and then only when each salamander is maintained under constant supervision.
6. Gasoline must be kept and handled from approved safety cans.
7. All tarpaulins used for any purpose must be made of fire, water and weather-resistant materials.
8. You must furnish such watchmen as may be necessary to protect the public and those who are at or in the vicinity of the Work under this Contract, and to protect all materials, tools, machinery and equipment and all Work you have performed.
9. You must comply with all federal and state and local occupational health and safety statutes, and any occupational health and safety standards promulgated thereunder; provide reasonable protection to the lives, health and safety of all persons employed under this Contract; furnish to all such persons a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm; keep all persons employed under this Contract



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informed of your protections and obligations under the statutes; and provide all persons employed under this Contract with information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms and emergency treatment. The federal and state occupational health and safety statutes, and the rules and regulations promulgated thereunder, are considered part of this Contract as though fully set forth in this Contract.

10. You must provide safety instructions and training for all workers. You must conduct weekly craft safety meetings (tool-box type) of reasonable length as an effective means of communicating safety issues to workers. Reports containing tool box discussion topics must be signed-off by all attendees and must be submitted to the Commissioner.

I. Services and Use of Site

1. Work Area. After receipt of the Notice to Proceed, you must propose a suitable working area subject to approval by the Commissioner. You must secure the space at your own expense.
2. Temporary Services and Utilities. If specified in the Contract, you are responsible for arranging for and providing all general services and temporary facilities as specified in the Contract and as required for the proper and expeditious prosecution of the Work. You must pay all costs for those general services and temporary facilities. You must provide temporary connections for water, electricity and heat including installation, maintenance and removal of those facilities. You must pay the cost of all water, telephone, and electricity during the construction period.
  - a. Water. You must provide temporary water connections as required for drinking and construction purposes. The Commissioner reserves the right to regulate the use of water and may impose restriction on the use if you are using water carelessly. You must provide water and facilities for obtaining water for sanitary purposes, drinking, mixing concrete and for all other purposes at your expense. You are not permitted to obtain the water from the mains of the Chicago water system, except as may be provided in the Contract. Except with special permission from the Commissioner and the Department of Water, you must not make connections for water to the City's fire hydrants.
  - b. Light and Power. You must furnish the electricity and must furnish and install all wiring, electrical services, lighting units, insulated supports for wiring and all other electrical equipment together with all other incidental and collateral Work necessary for the furnishing of the temporary power and lighting facilities for the Work to be done under this Contract, all at no additional cost to the City. Electrical Work must be performed by a licensed electrician.
  - c. Temporary Heating During Construction. You must provide temporary closures or enclosures for all exterior door, window, roof or other types of exterior openings as required to provide protection from the elements during construction. It is your responsibility to keep water in pipes from freezing and to maintain temporary heat in areas where Work is being performed at not less than 50° F before plastering and painting and not less than 60° F after. The Heating period is from approximately October 1 to May 30 unless conditions warrant otherwise. You must furnish, install, operate and maintain all required temporary heating equipment, and must provide and pay all fuel costs.
3. Temporary Construction Facilities. Unless otherwise specified, you must provide and maintain the following temporary construction facilities throughout the construction period and remove them at the completion of the Work:
  - a. Field Offices. Unless otherwise specified in Book 3, you must provide a temporary building or mobile type field office of such size and containing such equipment as you deem necessary to conduct the operations. The field office must be provided with a telephone for your superintendent and use by others during the entire period of construction. The telephone must be removed promptly upon Final Completion and Acceptance of the Work.
  - b. Unless otherwise specified in Book 3, you must supply a field office for the City's Superintendent consisting of a separate office facility. It must be of adequate size for efficient operations and be furnished with a desk, three chairs, 4-drawer file cabinet and a plan table.

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It must be equipped with electric lighting, heating, ventilating and cooling facilities. you must provide a separate telephone for City Superintendent's use.

- c. You must also provide and maintain in clean condition for Superintendent's use, including toilet facilities, having a water closet and laboratory fixture connected to sanitary sewer and water service. Temporary toilet facilities must be located in the City's Superintendent's trailer and comply with City and State regulations relating to health and sanitation. The toilet facility must be serviced twice weekly and kept stocked with toilet paper, soap, and paper towels.
  - d. Toilets. You must provide at least one portable chemical toilet for every 20 workers or fraction of that number at the Work site as soon as construction operations commence. Toilet facilities must be serviced twice weekly, which includes draining tank and refilling and disinfecting the interior of each toilet unit, and keeping each unit stocked with toilet paper. Toilet facilities must be maintained during the term of the construction period and removed upon completion of the Work.
  - e. Stove heaters in temporary offices and sheds must be properly installed to protect combustible walls, floors and roof.
  - f. Storage of Materials - If it is necessary to store materials, they will be protected in such a manner as to insure the preservation of their quality and fitness for the work. All stored materials will be inspected at the time of use in the Work even though they may have been inspected and approved before being placed in storage. You may store materials in the areas provided as working areas by the Contract. If no areas are provided, or if the areas provided are insufficient, you must provide the space required at your expense. Upon completion of the Work, you must clean and restore the storage sites and working areas to their original condition at your expense.
  - g. All materials and equipment will be received at the Work undamaged, The Commissioner will have the right to reject any method of packing and shipping that, in the Commissioner's opinion, will not adequately protect the materials and equipment against damage while they are in transit or storage or that will damage existing structures.
  - h. Storage Sheds. You and each Subcontractor must provide suitable watertight storage sheds for their own use as needed. You and each subcontractor are responsible and pay for any electric services to their storage shed. However, the electrical Work will be performed by an electrical Subcontractor. You are responsible for materials stored in the open; they must be arranged in an orderly manner and properly protected against the elements and damage.
4. Working Space. You must provide working space for your own use and for each of your Subcontractors. It must provide sufficient space for benches, tools, material storage and for such other purposes as may be required to properly perform and expedite the Work. Allocation of such Work areas is subject to approval by the Commissioner. You must maintain all Work areas in a clean and orderly condition and take whatever precautions as may be necessary adjacent to the new Work. You must clean, repair or replace any damage to Work site due to improper protection at no additional cost to the City.
  5. Equipment and Falsework. You must determine the methods to be employed, the procedures to be followed, the equipment, plant, falsework, shoring, bracing, and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract. Only adequate and safe procedures, methods, structures, and equipment must be used. You must furnish, maintain, and be solely responsible for all equipment such as temporary ladders, ramps, runways, hoists, scaffolding, and similar items required for proper execution of Work. All such apparatus, equipment and construction must meet the requirements of federal, State and local laws concerning the safety and protection of employees. No hoist, scaffolding or other equipment must be erected at such location as will interfere with general construction or progress of other trades. Hoists, scaffolding or other equipment must be located at sufficient distance from exterior walls to prevent staining or marring of any permanent Work. All suspended scaffolding and staging must be lowered to ground level at the end of each work day.

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6. **Project Sign.** You must erect and maintain signs identifying the Project and indicating City, and to the extent applicable, State and federal participation. Work under this item includes constructing and erecting project signs of the size and material specified in the Contract drawings. These signs must be erected in locations approved by the Commissioner and must be maintained throughout the term of this Contract. You are responsible for the immediate removal of graffiti. If you are notified of graffiti, you must remove such within 24 hours. The signs must not be removed until you receive such notice from the Commissioner. No separate payment will be made for furnishing, erecting and maintaining the project signs; it is incidental to the Contract.

**J. Reports and Plans**

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

**XVII. STANDARD SPECIFICATIONS**

**A. Concreting in Freezing Weather**

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

**B. Protection of Railroad Traffic and Property**

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

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

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

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

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**XVIII. ENVIRONMENTAL REQUIREMENTS**

**A. Compliance with Environmental Laws**

1. You must comply with all Environmental Laws and any present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive that regulates, relates to, imposes liability for or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the federal government, or the states, or any agency, court or body of the federal government, any state or any political subdivision of them exercising executive, legislative, judicial, regulatory or administrative functions. You recognize that many federal and state laws imposing environmental and resource conservation requirements may apply to the Contract. You also recognize that U.S. EPA, U.S. DOT and other agencies of the state and local governments have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the Contract. Thus, you must adhere to, and impose on your Subcontractors, any such requirements as these governments and agencies may now or in the future promulgate. Listed below in Section are requirements of particular concern. You acknowledge that this list does not constitute your entire obligation to meet all federal environmental and resource conservation requirements. You must include these provisions in all subcontracts.
2. If you are required pursuant to any Environmental Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on, under, or about any premises you use to perform the Work required under this Contract, you must provide a copy of that report or notice to the City. In the event of a release or threatened release of Hazardous Materials or special waste into the environment, or in the event of any claim, demand, action or notice is made against you regarding your failure or alleged failure to comply with any Environmental Law, you must notify the City pursuant to Section, "Disposal of Waste Materials, Construction Debris, Soils and Waste," below.
3. If you fail to comply with any Environmental Law, the City may terminate this Contract in accordance with the default provisions of this contract and may adversely affect your eligibility for future contract awards.

**B. Environmental Permits**

1. You must show evidence of, and keep current throughout the term of this Contract, all waste hauling, special waste hauling, disposal permits and insurance certificates required by federal, State, City or other local governmental body or agency pursuant to any Environmental Law.
2. When requested by the Chief Procurement Officer, you must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Chief Procurement Officer throughout the duration of this Contract. Noncompliance with this requirement may be cause for termination of this Contract and declaring you non-responsible in future bids.
3. Environmental Records and Reports. You are required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including:
  - a. Vehicle maintenance records;
  - b. Safety and accident reports;
  - c. IEPA or OSHA manifests;
  - d. Disposal records, including disposal site used, date, truck number and disposal weight, bills of lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material; and
  - e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

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

1. You are responsible for the proper disposal of all materials, construction debris, soil and other waste. Hauling and disposal by a Subcontractor does not relieve you from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes must be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. You must identify the disposal site(s) or transfer station(s) to which you have contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.
2. You must upon request provide the Commissioner or his designated representative with copies of all pertinent documents, including load tickets, manifests, bills of lading, scale tickets, and permits and/or licenses for the proposed transfer station and/or landfill. If the transfer station and/or landfill you propose to use does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, you must replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the City. If you dispose of materials, construction debris, soil or other wastes at a site that is not properly permitted, you will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.
3. You must notify the Commissioner, within 24 hours, of receipt of any environmental complaints, fines, citations, violations or notices of violation ("Environmental Claim") by any governmental body or regulatory agency against you by any third party relating to the loading, hauling or disposal of materials, construction debris, soil or other wastes. You must provide evidence to the Commissioner that any such Environmental Claim has been addressed to the satisfaction of its issuer or initiator.
4. You must notify the City of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of materials, construction debris, soil and other wastes under this Contract in which you are asked to participate.
5. You must verify, in writing, whenever requested by the Commissioner, that all materials, construction debris, and other waste you accept from the City have been disposed of in compliance with all Environmental Laws.
6. The form for identifying your debris disposal/handling site(s) and acknowledging terms and conditions relating thereto that you have executed and attached to this Contract is incorporated by reference (the "Form"). In addition to the representations and requirements contained in the Form, you acknowledge that unless otherwise authorized in writing by the Commissioner of Environment, you must not continue to use a disposal/handling site identified in the Form that (i) has been cited as being in violation of any environmental law or regulation or of any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the Form, you must arrange for a substitute disposal/handling site that meets the requirements specified in the Form and provide a revised Form to the Commissioner of Environment. You further acknowledge that any such substitution is at no additional cost to the City, regardless of the reason necessitating such substitution.

**D. Equipment and Environmental Control During Transport**

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

**E. Environmental Control**

In performing the Work, you must become thoroughly familiar with all federal, State, and local statutes, ordinances, and directives with respect to the elimination of excessive noise and pollution of air, water, and soil due to construction and other operations. Attention must be given to reduce the noise of heavy

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construction equipment and to the control of dust, smoke, and fumes from construction equipment and other operations on the Work site, and the dirt and noise created by heavy truck operations over City streets in accordance with ordinances of the City and orders of the Commissioner. The discharge of Hazardous Materials into waterways and City sewers is not permitted.

**F. Environmental Protection.**

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

1. **Air Quality.** You must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 et seq. Specifically, you must comply with applicable requirements of U.S. EPA regulations, "Conformity to State of Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act," 40 CFR Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR Part 93; and National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR § 61.145. You further must report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Contract implementation activity to the City and the appropriate U.S. EPA Regional Office.
2. **Clean Water.** You must comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 USC §§ 1251 et seq. You further must report and require each Subcontractor at any tier to report any violation of these requirements resulting from any Contract implementation activity to the City and the appropriate U.S. EPA Regional Office.
3. **List of Violating Facilities.** You acknowledge that any facility to be used in the performance of the Contract or to benefit from the Contract must not be listed on the U.S. EPA List of Violating Facilities ("List"), and you must promptly notify the City if you receive any communication from the U.S. EPA that such a facility is under consideration for inclusion on the List.
4. **Preference for Recycled Products.** To the extent practicable and economically feasible and to the extent that it does not reduce or impair the quality of the Work, you must use recycled products in performance of the Contract pursuant to U.S. Environment Protection Agency (U.S. EPA) guidelines at 40 CFR Parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962.

**G. Open Dumping Prohibited**

You must remove all recyclable material and garbage, refuse or other waste material, including broken concrete, bricks, rock, paving asphalt and incidental debris generated from all construction or demolition activities performed under this Contract and transport them to a facility that is zoned and permitted to accept such material under Chapter 11-4 of the City Municipal Code and all Environmental Laws. You must retain, for each load of material, bills of lading, manifests, or other confirmatory receipts signed by a representative of the accepting facility and make them available to the City upon request.

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**XIX. INSURANCE, INDEMNITY AND BONDS**

**A. Indemnity**

1. You must protect, defend, indemnify, and hold the City, its officers, officials, representatives, and employees (collectively the "Indemnitees"), harmless from and against all claims, damages, demands, injury or death, in consequence of granting this Contract or arising out of or being in any way connected with your performance under this Contract except for matters shown by final judgment to have been caused by or attributable to the negligence of Indemnitees. This indemnification obligation is effective to the maximum extent permitted by applicable law. This indemnity extends to all legal costs, including attorney fees, costs, liens, judgments, settlements, penalties, professional fees, and other expenses incurred by the City, including fines and penalties imposed by public bodies, and the reasonable settlement of such claims. This indemnification obligation is not limited by any amount of insurance required under this Contract. Further, the indemnification obligation contained in this section will survive the expiration or termination of this Contract.
2. You will be solely responsible for the defense of all claims, demands, or suits against Indemnitees, including claims by your employees, subcontractors, agents, or servants even though the claimant may allege that the Indemnitees were in charge of the Work or alleged negligence on the part of Indemnitees. The City will have the right, at its sole option, to participate in the defense of any such suit, without relieving you of your obligations under this section.
3. "Injury" or "damage" as these words are used in this section will be construed to include injury or damage consequent upon the failure of or use or misuse by you, your Subcontractors, agents, servants, or employees, of any scaffolding, hoist cranes, stays, ladders, supports, rigging, blocking or all other kinds of items of equipment, whether or not they are owned, furnished, or loaned by the Indemnitees.
4. You will promptly provide, or cause to be provided, to the Commissioner and City Corporation Counsel copies of all notices that you may receive of any claims, actions, or suits that may be given or filed in connection with your performance or the performance of any Subcontractor and for which the Indemnitees are entitled to indemnification under this Contract and to give the Indemnitees authority, information and assistance for the defense of any claim or action.

**B. Contribution**

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

**C. Admiralty**

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

1. Without limiting your waiver, you specifically consent to pay all sums in respect of any claims against the Indemnitees and other costs suffered by the Indemnitees arising from or occasioned by your operations in or on waterways, including the following:
  - a. Loss or damage to any other ship, vessel or boat caused proximately or otherwise by your vessel, or loss of the cargo or the other ship, vessel or boat;

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

**D. Performance and Payment Bonds**

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

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

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

**E. Insurance**

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

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

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



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**XX. CLAIMS AND DISPUTES**

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

B. Claims

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

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

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

C. Disputes

1. Invoking Dispute Resolution Procedures. If you dispute the Commissioner's resolution or denial of your claim, or if your claim is deemed denied, you have 10 days to forward your claim and your documentation to the Chief Procurement Officer indicating to him that you are requesting resolution of a dispute and showing that you have complied with the preceding claims procedures. Your 10-day period to invoke dispute resolution by the Chief Procurement Officer is counted from the date the Commissioner's written resolution was sent to you, or, if he has not responded or forwarded the claim, from the date on which the time for the Commissioner's response lapsed.
2. Waiver. If you fail to file a Request for Resolution of Dispute with the Chief Procurement Officer within the 10-day period you will have waived your claim, the right to make the claim later, and the right to dispute its resolution or denial.

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3. Dispute Procedures. Once the dispute resolution procedures are invoked, the Chief Procurement Officer will proceed to a final and binding decision under such rules and regulations as he from time to time promulgates. A copy of those rules and/or regulations is available through the Department of Procurement Services. The Chief Procurement Officer's decision will be implemented through a Contract Modification, if required, that will be made a part of the Contract with your signature or without it should you refuse to sign the Contract Modification. If either you or the Commissioner disagree(s) with the decision of the Chief Procurement Officer, the exclusive remedy is judicial review by a common law *writ of certiorari*. Unless such review is sought within 35 days of receipt of the Chief Procurement Officer's decision, all rights to seek judicial review are waived.

**XXI. EVENTS OF DEFAULT AND TERMINATION**

**A. Chief Procurement Officer's Right**

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

**B. Events of Default**

Your failure to perform any of your obligations under the Contract, including the following, are events of default:

1. Failure to begin the Work at the time specified;
2. Failure to perform the Work with sufficient workers and equipment or with sufficient materials to insure the completion of Work or any part of the Work within the time specified by the Contract;
3. Failure to perform the Work in accordance with the Contract;
4. Failure to promptly remove materials, repair, or replace Work that was or were rejected as defective or unsuitable;
5. Unauthorized discontinuation of the Work;
6. Insolvency, bankruptcy or assignment for the benefit of creditors that impairs your ability to pay Subcontractors or perform the Work;
7. Failure to pay Subcontractors or material suppliers;
8. Failure to carry on the Work in a manner acceptable to the Commissioner;
9. Failure to observe federal, state, or local laws or regulations governing safety and security requirements, including all environmental requirements;
10. Failure to comply with any other term of this Contract that states an event of default or failure to comply with any term of this Contract in any material respect; and
11. Failure to identify disposal site(s) for materials, construction debris, soil and other wastes or to submit such information when requested by the Chief Procurement Officer.

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**C. Remedies**

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

1. **Termination Without Cure.** The Chief Procurement Officer may terminate the Contract by written notice of the default and termination to you and your sureties. The Chief Procurement Officer's decision and declaration of termination are final and effective.
2. **Opportunity to Cure.** The Chief Procurement Officer may by written notice of the default provide you the opportunity to cure it. You must cure the default within 10 days after notice from the Chief Procurement Officer is given. If the Chief Procurement Officer receives written notification from the Commissioner that you have not cured the default within the 10-day cure period, the Chief Procurement Officer may at any time after that terminate the Contract, in which event the termination of the Contract is final and effective.
3. In addition to the foregoing, upon an event of default as defined in Section , "Events of Default," the City may invoke any or all of the following remedies:
  - a. The right of set-off against any payments due or to become due to you and against any retainage;
  - b. The right to take over and complete the Work, or any part of it, either directly or through others. The City may use your Subcontractors, materials and equipment to complete the Work. If the City notifies you that it is invoking this remedy, all rights you may have in or under your subcontracts are assigned to the City, subject to the City's right to take assignment of all or only selected subcontracts, at the City's discretion. The sole obligation accepted by the City under such subcontracts is to pay for Work satisfactorily performed after the date of the assignment. In the event a conditional assignment has not been executed, you must execute, or cause to be executed, any assignment, agreement, or other document that may be necessary, in the sole opinion of the Corporation Counsel, to evidence or effect compliance with this provision. You must promptly deliver such documents upon the City's request. In the case of any subcontract so assigned and accepted by the City, you remain liable to the Subcontractors for any payment already invoiced to and paid by the City, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortious conduct, or any other act or omission, or breach of Contract, by you, your officers, employees, agents, and other Subcontractors, arising before the date of assignment to the City, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. You must notify your Subcontractors of these requirements;
  - c. The right, in the event of termination, to deduct all costs and changes incurred by the City, together with the cost of completing the Work, from any moneys due or that may become due to you. When the expense incurred by the City exceeds the sum that would have been payable under the Contract, you and the surety are liable and must pay to the City the amount of the excess;
  - d. The right to terminate the Contract as to any or all of the Work yet to be performed;
  - e. The right of specific performance, an injunction, or any other appropriate equitable remedy, as may be applicable;
  - f. The right to money damages, including all expert witness or other consultant fees, court costs, and attorneys' fees that the City may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an event of default under this Contract;
  - g. The right to withhold all or any part of your compensation;
  - h. The right to terminate any or all of any other contracts that you may have with the City; and
  - i. The right to deem you non-responsible in future contracts to be awarded by the City.

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**D. Nonexclusivity of Remedies**

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

**E. No Waiver of Legal Rights; No Estoppel**

Neither the acceptance by the City or any of its representatives, nor its payment for the whole or any part of the Work, nor its extension of time, nor any possession taken by the City, will operate as a waiver by the City of any portion of the Contract, or of any power reserved in this Contract or any right of the City to damages provided in this Contract.

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

The City is not precluded or estopped from showing the true amount and character of the Work you performed and materials you furnished or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The City is not precluded or estopped from recovering from you and your sureties such damages as the City may sustain by reason of your failure to comply with the terms of the Contract.

**F. Adjudication of Termination**

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

**G. Non-Appropriation**

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

**H. Early Termination**

1. The City, through the Chief Procurement Officer, may terminate the Contract by written notice stating the effective date of the termination. Immediately upon receipt of such notice, you must provide similar written notice to the affected Subcontractor(s), whereupon you and they must, except for services necessary for the orderly termination of the Work,:
  - a. Stop all Work and place no further order or subcontracts for materials, services, equipment or supplies;
  - b. Assign to the City, in the manner and to the extent directed, all of your rights under Work orders, purchase orders and subcontracts relating to the portion of the Work that has been completed;
  - c. Terminate Work orders, purchase orders and subcontracts outstanding to the extent that they relate to the Work and are not assigned to the City;

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- d. Take any action necessary to protect property in your possession in which the City has or may acquire an interest; and
- e. Take any other action toward termination of the Work that the City may direct.
2. If all or a portion of your Work is terminated pursuant to this Section , the City will pay to you, subject to the limitations set forth in this Contract, the sum of the following costs:
  - a. That portion of the Contract Price related to the Work you satisfactorily completed immediately before notice of termination, less the payments for progress or changes previously made;
  - b. Expenses incurred for which you are liable as the result of your termination of respective Work orders, purchase orders or subcontracts related to the notice of termination.
3. The City will not pay, and no payment is due, for Work not actually performed. The City will deduct from amounts claimed to be due any amounts previously paid to you and for any amounts that may be due the City, or that the City may offset or withhold by the terms of this Contract. The total amount of all payments to you must not, in any event, exceed the proportion that the Work actually performed (including materials delivered to the Project site minus credits for returned goods or canceled orders) at the date of termination bears to the entire Work to be performed under this Contract. Any payment to you under this Section will be made in accordance with the provisions of Article , "Payments."
7. After receipt of a notice of Early Termination, you must submit to the Commissioner your final invoice with supporting documentation promptly following the effective date of termination. The Commissioner may require certified payrolls, receipts and other proof of expenditures. The final invoice must be submitted in no event more than 60 days after the effective date of termination. Failure to submit the final invoice within 60 days after the effective date of termination constitutes a waiver of the final invoice.

**XXII. COMPLIANCE WITH ALL LAWS**

**A. Contractor Must Comply with All Laws**

You must at all times observe and comply, and must cause your Subcontractors to observe and comply with all applicable federal, State and local laws, ordinances, codes, rules, regulations, and executive orders, now existing or later in effect, that may in any manner affect the performance of the Contract. Provision(s) required by law ordinance, codes, rules, regulations, or executive orders to be inserted in this Contract are deemed inserted, whether or not they appear in this Contract, or upon application by either party, this Contract will forthwith be physically amended to physically make such insertion; however, in no event does the failure to insert such provision(s) prevent the enforcement of such provision(s) of this Contract.

In performing the Work, you must follow the most stringent of the applicable agency and code requirements. You are fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

**B. Provisions Relating to Liens**

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

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

**C. Non-Discrimination**

1. In connection with this Contract, you must not fail to hire, refuse to hire, discharge, or discriminate against any individual with respect to compensation or the terms, conditions, or privileges of employment because of that individual's race, color, religion, gender, age, disability, or national origin. You must not limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise, adversely affect such individual's status as an employee, because of the individual's race, color, religion, gender, age, disability, or national origin. You must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and the rules and regulations of the Illinois Department of Human Rights; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.*, as amended; and the Environmental Barriers Act, 410 ILCS 251 *et seq.* You must also comply with the Chicago Human Rights Ordinance, Chapter 2-160, § 2-160-010 *et seq.* of the Municipal Code, as amended. Further, you must furnish such reports and information as requested by the Chicago Commission of Human Relations.
2. Subcontractors. You must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Contract.

**D. Conflicts of Interest**

You covenant that no member of the governing body of the City or other units of government and no other officer, employee, or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Project to which this Contract pertains, has any personal interest, direct, or indirect, in this Contract. In accordance with 41 USC § 22, no member of or delegate to the Congress of the United States will be permitted to any share or part of this Contract or to any financial benefit to arise from it, nor, under applicable laws, will any member of or delegate to the Illinois General Assembly nor any alderman of the City or City employee.

You covenant that your officers, directors and employees, and the officers, directors and employees of each of your members if a joint venture, and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Project that would conflict in any manner or degree with the performance of the Work under this Contract. You further covenant that in the performance of this Contract, no person having any such interest will be employed.

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Furthermore, if any federal funds are to be used to compensate or reimburse you under this Contract, you represent that you are in compliance with federal restrictions, and promise that you will remain so, including federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 USCS 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, you must execute a Certification Regarding Lobbying, which is contained in the EDS attached to this Contract as an exhibit.

**E. Business Relationships with Elected Officials**

1. Pursuant to § 2-156-030(b) of the Municipal Code of the City, 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 § 2-156-030(b) by any elected official with respect to this Contract is grounds for termination of this contract.
2. Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity that entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided however, a financial interest does not include:
  - a. any ownership through purchase at fair market value or inheritance of less than 1% of the share of a corporation, or any corporate subsidiary, parent or affiliate of them, 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;
  - b. the authorized compensation paid to an official or employee for his office or employment;
  - c. any economic benefit provided equally to all residents of the City;
  - d. a time or demand deposit in a financial institution; or
  - e. an endowment or insurance policy or annuity contract purchased from an insurance company.
3. A "contractual or other private business dealing" does not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

**F. Chicago Inspector General**

It is your duty and that of all of your Subcontractors and every applicant for certification of eligibility for a City contractor program, and all your and their officers, directors, agents, partners and employees to cooperate with the Inspector General in any investigation undertaken under Chapter 2-56 of the Municipal Code. You must abide by all provisions of Chapter 2-56 of the Municipal Code. You must inform Subcontractors of this provision and require understanding and compliance with it.

**G. Governmental Ethics Ordinance**

You must comply with Chapter 2-156 of the Municipal Code, "Governmental Ethics," including § 2-156-120 of this chapter pursuant to which no payment, gratuity or offer of employment is 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 there with, 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 is voidable as to the City.

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H. Economic Disclosure Statement and Affidavit (EDS)

You are required to submit a fully executed Economic Disclosure Statement and Affidavit (EDS), which includes a Disclosure of Retained Parties, on the form provided in Book 2 of the Contract. The document must be signed by an authorized officer of the company before a notary and such document is incorporated by reference to this Contract.

I. Debts; Outstanding Parking Violation Complaints

In accordance with § 2-92-380 of the Municipal Code, and as otherwise permitted by law, in addition to any other rights and remedies (including any set-off) available to the City under the Contract or permitted at law or in equity, the City is entitled to set off a portion of the Contract price or compensation due under the Contract, in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and the amount of any debt owed by the contracting party to the City. For purposes of this provision, the terms "outstanding parking violation complaints" and "debt" are defined in the Municipal Code as are the conditions under which no set-off will be made.

J. Americans with Disabilities Act

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

K. Veterans Preference

You must comply with the provisions of 330 ILCS 55/0.01 *et. seq.*, which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative and supervisory positions) preference is given to veterans of the Vietnam era and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates. You must ensure that the following provision is inserted in all contracts entered into with any Subcontractors and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any material, labor, or services in connection with this Contract.

L. Steel Products

To the extent permitted by law, this Contract is subject to all provisions of the "Steel Products Procurement Act," 30 ILCS 565/1 *et seq.* as it may be amended from time to time. Knowing violation of this law may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.



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M. Chicago Residency Requirements

***[This section deliberately omitted.]***

N. Employment of Illinois Laborers on Public Works Projects

You must use only Illinois laborers in the performance of this Contract to the extent (1) required by the Employment of Illinois Laborers on Public Works Projects Act, 30 ILCS, 570/0.01, as amended from time to time and (2) otherwise permitted by law.

O. Compliance with Child Support Orders Ordinance

The Child Support Arrearage Ordinance, § 2-92-415 of the Municipal Code, furthers the City's interest in contracting with entities that demonstrate financial responsibility, integrity and lawfulness, and finds that it is especially inequitable for contractors to obtain the benefits of public funds under City contracts while their owners fail to pay court-ordered child support, and shift the support of their dependents onto the public treasury.

In accordance with § 2-92-415 of the Municipal Code, if the Circuit Court of Cook County or an Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owner(s) in arrearage on their child support obligations and: (1) such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (2) such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed, (see Certification of Compliance with Child Support Orders in EDS), then:

**For those bidders in competitive bid contracts, the City will assess an 8% penalty. This penalty will increase their bid price for the purpose of canvassing the bids in order to determine 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.**

For purposes of this Section, "**SUBSTANTIAL OWNER**" means any person who owns or holds a 10% or more interest in the bidder; where the bidder is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship.

"**PERCENTAGE OF INTEREST**" includes direct, indirect and beneficial interests in you, the contractor. Indirect or beneficial interest means that an interest in you are held by a corporation, joint venture, trust, partnership, association, estate or other legal entity, in which the individual holds an interest, or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a 20% interest in Contractor, and an individual or entity has a 50% or more percentage of interest in Corporation B, then such individual or entity indirectly has a 10% or more interest in you. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

The provisions of this Section will only apply where not otherwise prohibited by federal, state or local law.

P. Local Business Preference

***[This section deliberately omitted.]***

Q. MacBride Principles Ordinance

***[This section deliberately omitted.]***

R. Prohibition on Certain Contributions - Mayoral Executive Order 2011-4

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

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Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

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

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

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

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

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

For purposes of this provision:

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

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

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

S. Licensing of General Contractors

**Important: The failure to comply with the provisions of Chapter 4-36 of the Municipal Code ("Chapter 4-36") may result in ineligibility to bid, inability to perform (or continue) to work, in substantial fines, and/or in the City's revoking the Bidder's "general contractor" license.**

Information about Chapter 4-36 and application forms are available on the City's website, [www.cityofchicago.org](http://www.cityofchicago.org). A copy of the entire ordinance is provided in Book 2 of this contract.

In connection with this law, Bidder's attention is drawn especially to the following:

**Effect of Chapter 4-36 on Bidding and Award and Performance:**

1. As stated elsewhere in the specification, the City reserves the right to reject any or all bids.
2. **If the bid opening date for this specification is BEFORE March 29, 2004, regardless of when it is awarded**, then the Bidder who is ultimately awarded the contract must be in compliance with the requirements of Chapter 4-36 not later than March 29, 2004 in the appropriate license class commensurate with the size of this project, if the license is required for

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the scope of work, and must remain in compliance through the duration of the contract. If the period during which Bidder is required to hold its bid open extends beyond March 29, 2004, the City reserves the right to reject the bid AND TO RETAIN THE BID DEPOSIT of lowest responsive and responsible Bidder(s) who fail(s) to comply with Chapter 4-36 requirements and to award the contract to the next lowest responsive and responsible Bidder who is in compliance.

3. **If the bid opening date for this specification is March 29, 2004 OR LATER**, then Bidder must be in compliance with the requirements of Chapter 4-36, in the appropriate license class commensurate with the size of this project, if the license is required for the scope of work, **at the time Bidder submits its bid** and, if it is awarded a contract, throughout the term of the contract.
4. After March 29, 2004, your failure to be licensed as a "general contractor" at all times throughout the term of the contract, if the license is required for the scope of work, or your loss of your general contractor license, if the license is required for the scope of work, are **events of default** under the contract and either or both triggers the City's right to exercise any and all rights and remedies permitted under the contract, at law, or in equity.
5. **All contract modifications for work to be done after March 29, 2004**, regardless of when the contract was bid or awarded, are subject to the requirements of Chapter 4-36.

T. Buy America

See Section.

XXIII. **MISCELLANEOUS**

A. Counterparts

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

B. Modifications

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

C. Governing Law

This Contract is governed in accordance with the laws of the State of Illinois without regard to choice of law principles. You irrevocably submit, and must cause your Subcontractors to submit, to the original jurisdiction of those State or federal courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract. The City may, at its option, have service of process on you 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 that you actually maintain, or by personal delivery on any of your officers, directors, or managing or general agents.

D. Consent to Service of Process and Jurisdiction

All judicial proceedings brought against you with respect to this Contract may be brought in (1) any court of the state of Illinois of competent jurisdiction, or (2) any federal court of competent jurisdiction located within the boundaries of the District Courts of the Northern District of Illinois. By execution and delivery of this Contract, you accept, for yourself and in connection with your properties, generally and unconditionally, the exclusive jurisdiction of those courts, and you irrevocably consent to be bound by any final judgement rendered by them from which no appeal has been taken or is available. You designate and appoint the representative identified on the signature page of this Contract under the heading "Designation of Agent for Service Process" as your agent in Chicago, Illinois to receive on your behalf service of all process in any such proceedings in those courts (which representative must be available to receive service at all times), the service being acknowledged by the representative to effective and binding service in every respect. You may change your agent only upon giving written notice to the City of the name and address of a new Agent for Service of Process

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who works within the geographical boundaries of the City and that you retain or employ. You irrevocably waive any objection (including any objection to venue or based on the grounds of forum non conveniens) that you may now or later have to bring any action or proceeding with respect to this Contract in the jurisdiction set forth above. Nothing in this Section 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 you in the courts of any other jurisdiction.

C. Contractor Cooperation

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

D. Joint and Several Liability

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

E. No Third Party Beneficiaries

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

F. Notices

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

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

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

G. Authority

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

H. Consents and Approvals

Unless otherwise expressly stated in this Contract or otherwise required by law, any consents and approvals to be given by the City are made by the Commissioner.

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**XXIV. SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT**

**A. Policy and Terms**

1. It is the policy of the City (City) that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, have the maximum opportunity to participate fully in the performance of contracts subject to 49 CFR Part 26. You must not discriminate against any person or business on the basis of race, color, national origin or sex in the performance of this Contract. You must carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation (DOT)-assisted contracts and take affirmative action to ensure that businesses owned by socially and economically disadvantaged individuals have full opportunity to participate.
2. Failure to carry out the commitments and policies set forth in this Article constitutes a material breach of the Contract and may result in the termination of the Contract or such remedy as the City deems appropriate.
3. Accordingly, the City has established the following goals for Contract participation by DBEs:

**Overall Program DBE Goal: 30 percent**

For specific projects, the **Contract DBE Participation Goal** is established in the Project Information Section **on page 2 of Book 2**.

4. You must make good faith efforts to obtain DBE participation in this Contract. The commitment will be reflected in Schedule D. You must document that you have obtained enough DBE participation to meet the Contract DBE Participation Goal set forth above or, if unsuccessful in doing so, have made adequate Good Faith Efforts to meet the goal (see Section , "Good Faith Efforts"). If awarded the Contract, you must expend not less than the committed percentage of the total Contract Price (including any amendments and modifications) for Contract participation by DBEs.
5. For purposes of evaluating your responsiveness, the Contract DBE Participation Goal will be a percentage of your Total Base Bid. However, the Contract DBE Participation Goal applies to the total value of the Contract, inclusive of all amendments and modifications. The Contract Compliance Administrator also has the authority to review each proposed Contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the Contract value by 10 percent of the initial award or \$50,000, whichever is greater, for opportunities to increase participation of DBEs already involved in the Contract.
6. The Contract DBE Participation Goal may be met by your status as DBE, or by joint venture with one or more DBEs, or by subcontracting a portion of the Work to one or more DBEs, or by purchasing materials used in the performance of the Contract from one or more DBEs or by any combination of the foregoing, as further described in Section , "Counting DBE Participation Towards the Contract DBE Participation Goal."
7. You are encouraged to use financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of your willingness to do business with DBEs. Information about such institutions is available in the City's DBE Program document. In addition, a hard copy of the Disadvantaged, Minority, and Women Business Enterprises Directory is available at the City , Office of Business Development, City Hall, 121 N. LaSalle, Room 403, Chicago, IL 60602.
8. In the event of a conflict between this Article and 49 CFR Part 26, the provisions of 49 CFR Part 26 supersede Article .

**B. Definitions and Usage**

1. Terms that are capitalized in this Article and not defined elsewhere in Book 1 have the meanings set forth in 49 CFR § 26.5 or below.

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- a. "Area of Specialty" means the description of a DBE firm's business has been determined by the Contract Compliance Administrator to be most reflective of the DBE firm's claimed specialty or expertise. Each DBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory. Credit toward the Contract DBE Participation Goal is limited to the participation of firms performing within their Areas of Specialty.

<p><b>NOTICE:</b> The Department of Procurement Services does not make any representation concerning the ability of any DBE to perform work within its Area of Specialty. It is your responsibility to determine the capability and capacity of DBE firms to satisfactorily perform the Work</p>
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- b. "Contract Compliance Administrator" means the officer appointed pursuant to Section 2-92-490 of the Municipal Code , currently the Deputy Procurement Officer of the Office of Business Development.
- c. "Directory" means the directory maintained by the City, as well as the directory maintained by the Illinois Department of Transportation that identifies all firms eligible to participate as DBEs. Both Directories list the firm's name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE. The City revises its Directory monthly, and printed copies are available at the Office of Business Development, 121 N. LaSalle St., Room 403, Chicago, Illinois, 60602. The City's Directory is also available on the City's web site at [www.cityofchicago.org](http://www.cityofchicago.org). You are responsible for verifying the current certification status of all proposed DBE firms.
- d. "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern that (i) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, 51 percent of the stock is owned by one or more such individuals; and (ii) whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- e. "Joint Venture" means an association between a DBE firm and one or more other firms in which property, capital, efforts, skill and knowledge are combined to carry out a single business endeavor engaged in for profit, the DBE is responsible for a distinct, clearly defined portion of the Work of the Contract and shares in the capital contribution, control, management, risks and profit commensurate with its ownership interest in the joint venture.

**C. Third Party Challenges to Eligibility of DBE Firm**

As noted in 49 CFR § 26.87, any third party (complainant) may file a complaint alleging that a currently certified DBE is ineligible. The complaint must be made in writing to the City and specify the alleged reasons why the firm is ineligible and include all available information relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged. The City, during its determination of findings, will notify the challenged party of the allegations and notify both parties in writing of the outcome. The confidentiality of the complainant's identity will be protected as provided in 49 CFR § 26.109(b). If the City determines first, that there was not reasonable grounds presented in the complaint sufficient to justify an inquiry, then the City will notify the complainant and the challenged party of this determination and the reasons for it. During the pendency of any complaint, the presumption that the challenged party is a socially and economically disadvantaged will remain in effect.

**D. Joint Ventures**

You may develop joint venture agreements as an instrument to provide participation by DBEs in contract Work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or among one or more DBE firms and non-DBE firms.

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

1. The DBE venturer(s) share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest;
2. The DBE venturer(s) is responsible for a distinct, clearly defined portion of the Work of the Contract, commensurate with its ownership interest in the joint venture;
3. The DBE venturer(s) actually performs with its own forces using its own equipment, work equal to at least 50% of the value of its ownership of the joint venture

The Contract Compliance Administrator will evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed Joint Venture, and all related documents to determine whether these requirements have been satisfied. In addition, the Contract Compliance Administrator will consider the record of joint venturers regarding work performed as joint venturers on City contracts. The decision of the Contract Compliance Administrator regarding eligibility of the Joint Venture is final.

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

**E. Counting DBE Participation Toward the Contract DBE Participation Goal**

You may count only the following toward the Contract DBE Participation Goal and should report only the following to the Contract Compliance Administrator:

1. **The value of the work actually performed by a DBE**, as described below, but only if the DBE is performing a “commercially useful function” on that Contract. The term “commercially useful function” is described in 49 CFR § 26.55(c):

- a. For construction contracts and contracts not involving *bona fide* services (as described in Section below):

The entire amount of that portion of a contract that is performed by the DBE’s own forces. Include the cost of supplies and materials obtained by the DBE for the Work of the Contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from you or your affiliate).

- b. For contracts involving the provision of *bona fide* services (such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract):

The entire amount of fees or commissions charged by a DBE for providing a *bona fide* service, provided that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The determination of whether the fee is reasonable and not excessive will be made by the City.

- c. When a DBE subcontracts part of the Work of its contract to another firm:

The value of the subcontracted Work, but only if the DBE’s subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the Contract DBE Participation Goal.

- d. Joint Ventures: When a DBE performs as a participant in a joint venture:

The portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with its own forces is counted towards the Contract DBE Participation Goal.

2. **Materials and Supplies: Regarding expenditures with a DBE for materials or supplies:**

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- a. If the materials or supplies are obtained from a DBE manufacturer:  
100 percent of the cost of the materials or supplies. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described in the specifications.
- b. If the materials or supplies are purchased from a DBE "regular dealer," as that term is described in 49 CFR § 26.55(e)(2):  
60 percent of the cost of the materials or supplies.

**3. Trucking Firms:**

If the DBE manages and supervises the entire trucking operation for which it is responsible on a particular contract and the DBE itself owns and operates at least one fully licensed, insured and operational truck used on the contract and all leased trucks display the name and identification number of the DBE, then:

- a. The total value of the transportation services a DBE provides on the contract using trucks it owns, insures and operates using drivers it employs.
  - b. The total value of the transportation services a DBE provides on the contract using trucks leased from another DBE trucking firm, including an owner-operator who is certified as a DBE trucking firm, but only if the lease indicates that the DBE lessee has exclusive use of and control over the truck, or, if the truck is used for others with the DBE lessee's consent, then the lease must give the DBE lessee absolute priority over its use.
  - c. Only the value of the fee or commission the DBE receives under a lease arrangement with non-DBE firms for the lease of trucks used to provide transportation services on the contract but only if the lease indicates that the DBE has exclusive use of and control over the truck, or, if the truck works for others with the DBE's consent, then the lease must give the DBE absolute priority over its use.
4. **Firm Not Currently Certified:** If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26, subpart D, at the time of execution of the contract, do not count or report the firm's participation, except as provided in 49 CFR § 26.87(i).
  5. **Firm Whose Eligibility Has Been Removed:** Do not report the dollar value of work performed under a contract with a firm after it has ceased to be certified.
  6. **Payment:** Do not report the participation of a DBE subcontractor until the amount to be counted toward the goal has been paid to the DBE.

**F. Procedure to Determine Bid Compliance**

The following Schedules and documents constitute the bidder's/proposer's DBE proposal, and **must be submitted at the time of bid opening or submission of proposals** unless stated otherwise:

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

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

The Schedule B, in conjunction with the joint venture agreement, must clearly evidence that each DBE venturer will be responsible for a distinct, clearly defined portion of the Work to be performed, and that each DBE firm's responsibilities are commensurate with its ownership interest. In order to demonstrate the DBE venturer's share in the capital contribution, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to (1) the contributions of capital and equipment; (2) Work items to be performed by the DBE's own forces; (3) Work items to be performed under



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the supervision of the DBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the DBE to be dedicated to the performance of the project.

The Schedule B and the joint venture agreement must clearly evidence the commitment of the DBE venturer to actually perform (with its own forces and equipment) work equal to at least 50% of the value of its ownership of the joint venture. Only the amount of actual work performed by the DBE venturer is credited to the DBE Participation Goal.

**2. Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant or Material Supplier**

A Schedule C, executed by the DBE firm (or Joint Venturer) must be submitted by you for each DBE included on your schedule D. Each Schedule C must accurately detail the work to be performed by the DBE firm and the agreed rates and prices to be paid. Each Schedule C must specify the percentage of the dollar value of the DBE's subcontract that will be sublet to non-DBE and DBE contractors and be signed and dated by the DBE. Failure to submit any Schedule C as required by this Section will result in a Chief Procurement Officer's determination that a bid or proposal is "non-responsive." The Chief Procurement Officer has the discretion to apply additional suitable sanctions against any bidder/proposer who fails to comply with these requirements. Appropriate sanctions may include, without limitation, forfeiture of the bidder's/proposer's bid deposit, rejection of the bidder's/ proposer's bid, or suspension of the bidder's/proposer's eligibility to enter into future contracting opportunities with the City.

**3. Schedule D: Affidavit of Prime Contractor Regarding DBEs**

Bidders must submit, together with the bid, and proposers must submit at the time specified in the request for proposals, a completed Schedule D committing them to the utilization of each listed DBE firm (*but see*, Section , Good Faith Efforts). The Schedule D must include the name, address, description of the work to be performed and dollar amount participation of each DBE subcontractor, supplier or consultant.

You must use "Good Faith Efforts," as that term is described in Section , to meet the Contract DBE Participation Goal (i.e., the specific dollar amount of participation by each DBE firm included on your schedule D). The total dollar commitment to proposed DBE firms should equal the Contract DBE Participation Goal. Bidders are responsible for calculating the dollar equivalent of the Contract DBE Participation Goal as a percentage of their total base bid or proposal.

All commitments made by the bidder's/proposer's Schedule D must conform to those presented in the submitted Schedule Cs. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any DBE in order to achieve the conformity between the Schedules C and D.

**4. Schedule F: Report of Subcontractor Solicitations**

All Bidders/Proposers must submit, together with their bid/proposal, a completed Schedule F report containing information on all subcontractors, DBEs and non-DBEs, solicited for participation in the contract. The Schedule F shall include the following subcontractor information:

Contractor name; Address; Contact person; DBE status; Type of work solicited

**5. Letters of Certification**

A copy of each proposed DBE firm's Letter of Certification from the City or the Illinois Department of Transportation should be submitted with the bid or proposal if currently certified. All Letters of Certification issued by the City include a statement of the DBE firm's Area of Specialty. The DBE firm's scope of work, as detailed by its Schedule C, must conform to its stated Area of Specialty.

**NOTICE – Failure to submit the following information at the time of bid opening or submission of proposals will render the bid or proposal non-responsive: the names and addresses of DBE firms that will participate in the Contract (Schedule D), a description of the work that each DBE will perform (Schedule D), the dollar amount of the participation of each**

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DBE firm participating (Schedule D), **written documentation** of your commitment to use a DBE Subcontractor whose participation you submit to meet a Contract goal (Schedule D), **written confirmation from the DBE** that it is participating in the Contract as provided in your commitment as prime contractor (Schedule C), **report on all subcontractors solicited** for participation in the Contract (Schedule F) and if the Contract goal is not met, **evidence of good faith efforts**, as set out in Section .

6. The submittals must have all blank spaces on the Schedule pages applicable to the subject specification filled in correctly.
7. Agreements between a bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.
8. During the period before award, the submitted documentation will be evaluated. As required under 49 CFR § 26.109(c), all participants in the DBE Program, including you, must give, upon request, earnest and prompt cooperation to DOT, the City's Chief Procurement Officer and/or Contract Compliance Administrator or his or her authorized delegate in submitting to interviews that may be necessary, or in allowing entry to places of business or in providing further documentation, or in soliciting the cooperation of a proposed DBE in providing such assistance. Your bid or proposal may be treated as non-responsive by reason of the determination that you were found to be unresponsive or uncooperative when asked for further information about the proposal, or that false statements were made in the Schedules.
9. Bidders/proposers will not be permitted to modify their DBE proposal except as permitted to do so by the City. All terms and conditions stipulated for prospective DBE sub-contractors or suppliers therefore should be satisfactorily negotiated prior to the submission to the City of the bidder's/proposer's DBE commitment as part of the DBE proposal. If circumstances arise, where a proposed DBE becomes no longer available, the process described in Section , "DBE Substitutions," should be followed.
10. When necessary in the interest of time, the City may treat a bid or proposal as non-responsive instead of granting extended time for a bidder/proposer to replace DBEs named in the DBE proposal that are later determined to be ineligible or unavailable.

**G. Good Faith Efforts**

1. **In order for the your bid to be responsive**, at the time of the bid opening you must demonstrate you have made Good Faith Efforts to meet the Contract DBE Participation Goal. Proposers likewise must make the required demonstration by the time specified in the request for proposals. In both cases, the demonstration is made in the form of the documentation described in Section . You can demonstrate you have made Good Faith Efforts to meet the Contract DBE Participation Goal either by:
  - a. **Meeting** the Contract DBE Participation Goal, as provided in this Article , and documenting commitments for participation by DBE firms sufficient for this purpose; or
  - b. **Documenting**, in the manner described below, adequate Good Faith Efforts to meet Contract DBE Participation Goal. This means bidders must submit with their bids, and proposers at the time specified in the request for proposal, documentation to show that you took all necessary and reasonable steps to achieve the Contract DBE Participation Goal or other requirements of 49 CFR Part 26, Appendix A, which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if you were not fully successful. The following are examples of documented actions the Contract Compliance Administrator may consider to determine whether you made Good Faith Efforts:
    - (1) **Soliciting** through all reasonable and available means (e.g., attendance at pre-bid or pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the Work of the Contract. You must solicit this

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interest within sufficient time to allow the DBEs to respond to the solicitation. You must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- (2) **Selecting** portions of the Work to be performed by DBEs in order to increase the likelihood that the Contract DBE Participation Goal will be achieved. This includes, where appropriate, breaking out Contract Work items into economically feasible units to facilitate DBE participation, even where you might otherwise prefer to perform these Work items with your own forces.
  - (3) **Providing** interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - (4) **Negotiating** in good faith with interested DBEs. It is your responsibility to make a portion of the Work available to DBE subcontractors and suppliers and to select those portions of the Work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the Work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the Work. A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for your failure to meet the Contract DBE Participation Goal, as long as such costs are reasonable. Also, your ability or desire to perform the Work of a contract within your own organization does not relieve you of the responsibility to make Good Faith Efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
  - (5) **Not rejecting** DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's/proposer's efforts to meet the Contract DBE Participation Goal.
  - (6) **Making efforts** to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the City or you.
  - (7) **Making efforts** to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - (8) **Effectively using** the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
11. The following 10 types of documentation, as applicable to the situation, will be considered by the Contract Compliance Administrator in determining whether you have made Good Faith Efforts to meet the Contract DBE Participation Goal. **The documentation must be submitted at the time of bid opening or submission of proposals or the bid/proposal will be deemed non-responsive.**
- a. A detailed statement of efforts to identify and select portions of Work identified in the bid solicitation for subcontracting to certified DBE firms. Include copies of attendance logs from pre-bid meetings, advertisements and written notices, as applicable.
  - b. A listing of all DBE firms contacted that includes:

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- (1) names, address and telephone numbers of DBE firms solicited;
  - (2) date and time of contact;
  - (3) method of contact (written, telephone, facsimile transmittal, etc.)
  - (4) name of the person contacted.
- c. Copies of letters or any other evidence of mailing that substantiates outreach to DBE vendors that includes:
- (1) project identification and location;
  - (2) classification/commodity of Work items for which quotations were sought;
  - (3) date, item and location for acceptance of subcontractor bid proposals;
  - (4) detailed statement which summarizes direct negotiations with appropriate DBE firms for specific portions of the Work and indicates why negotiations were unsuccessful;
  - (5) affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve the Contract DBE Participation Goal by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on DBE subcontractors for the type of work that was solicited.
- d. Copies of proposed plans for selecting portions of the Work to be performed by DBEs in order to increase the likelihood that the Contract DBE Participation Goal will be achieved.
- e. Evidence that you negotiated in good faith with interested DBEs.
- f. Evidence that you did not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- g. Evidence that you made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance, as required by the City or you.
- h. Evidence that you made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- i. Evidence that you have provided timely notice of the need for subcontractors to at least 50 percent of the DBEs listed in the City's Directory as being certified in the applicable Areas of Specialty. Proof of notification (e.g. certified mail receipt or facsimile transmittal receipt) prior to the date a proposer's DBE proposal is due is required for any proposal to be deemed responsive; the proof of notification must be dated prior to the date of bid submittal for any bid submitted to be deemed responsive on the date of bid opening. The Contract Compliance Administrator may contact the certified DBEs for verification of notification.
- j. Evidence that subcontractor participation is excessively costly. Subcontractor participation will be deemed excessively costly when the DBE subcontractor proposal exceeds the average price quoted by more than 15 percent. In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information at bid opening and proposers at the time specified in the request for proposals:
- (1) A detailed statement of the work identified for DBE participation for which you assert the DBE quote(s) were excessively costly (in excess of 15 percent higher).
    - (a) a listing of all potential subcontractors contacted for a quotation on that Work item;
    - (b) prices quoted for the subcontract in question by all such potential subcontractors for that Work item.
  - (2) Other documentation that demonstrates to the satisfaction of the Contract Compliance Administrator that the DBE proposals are excessively costly, even though not in excess of 15 percent higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:

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- (a) the City's estimate for the work under a specific subcontract;
- (b) your own estimate for the work under the subcontract;
- (c) an average of the bona fide prices quoted for the subcontract;
- (d) demonstrated increase in other contract costs as a result of subcontracting to the DBE or other firm.

Note: The City reserves the right to modify this procedure when deemed appropriate.

2. Administrative Reconsideration

- a. The Contract Compliance Administrator makes the initial determination regarding your responsiveness based upon his or her review of the documentation. Within five days of being informed by the City that you are not responsive because you have not documented sufficient Good Faith Efforts, you may request administrative reconsideration. You should make this request in writing to the following reconsideration official:

Chief Procurement Officer  
Department of Procurement Services  
City Hall  
Room 403  
121 N. LaSalle Street  
Chicago, IL 60602

with a copy to:

Deputy Procurement Officer  
Division of Vendor Services  
City Hall  
Room 403  
121 N. LaSalle Street  
Chicago, IL 60602

The Chief Procurement Officer will not have played any role in the Contract Compliance Administrator's determination that you did not make or timely document sufficient Good Faith Efforts.

- b. As part of this reconsideration, you will have the opportunity to provide written documentation or argument concerning the issue of whether you met the Contract DBE Participation Goal or made adequate good faith efforts to do so. You will have the opportunity to meet in person with the Chief Procurement Officer to discuss the issue of whether you met the Contract DBE Participation Goal or made adequate good faith efforts to do. The City will send you a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the Contract DBE Participation Goal or make adequate good faith efforts to do so.

H. Reporting

- 1. You must, within five business days of receiving the awarded contract, execute formal subcontracts or purchase orders with the DBEs that were proposed, all in accordance with the terms of the bidder's/proposer's bid proposal and DBE assurances, and must promptly

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submit to the City a copy of the DBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the DBE.

2. During the life of the project, you must submit partial and final waivers of lien from DBE subcontractors that are drawn up to show the true, cumulative dollar amount of subcontractor payments made to date. In cases where waivers of lien are not available, the Contract Compliance Administrator may deem other documentation appropriate for submittal.
3. You must file regular DBE utilization reports on Purchases Form DBE Status - 1 entitled "Status Report of DBE (Sub)Contract Payments," according to the following procedure: at the time of signing each monthly payment voucher ("Summary of Estimate"), you must present the notarized DBE Status form executed to reflect the current status of effective and projected payments to DBEs. The current voucher will not be submitted to the City Comptroller for payment until the current DBE Status form has been presented.

**I. DBE Substitutions**

1. You must not make arbitrary changes to the commitments earlier certified in the Schedule D. Further, after once entering into each approved DBE subcontract, you may neither terminate the subcontract, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without in each instance (i) having just cause, including situations where your contract with the DBE includes termination for convenience; (ii) making Good Faith Efforts to find another DBE subcontractor to substitute for the original DBE (these Good Faith Efforts must be directed at finding another DBE to perform at least the same amount of Work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract DBE Participation Goal); and (iii) receiving the prior written approval of the City in all instances.

You must give the Contract Compliance Administrator reasons that justify your terminating a DBE, reducing the scope of work to be performed by a DBE, or decreasing the price to a DBE. The substitution procedure will be as follows:

- a. You must notify the Contract Compliance Administrator immediately in writing of an apparent necessity to reduce or terminate a DBE subcontract and to propose a substitute firm for some phase of Work, if needed in order to sustain the fulfillment of the Contract DBE Participation Goal.
- b. Your notification should include the specific reasons for the proposed substitution. Stated reasons that would be acceptable include any of the following examples: a committed DBE was found not to be able to perform, or not to be able to perform on time; a committed DBE was found not to be able to produce acceptable work; a committed DBE was discovered later to be not *bona fide*; a DBE committed at a given price later demands an unreasonable escalation of price; and, the Work to be performed by the DBE under your Contract with the City is terminated or reduced.

Your position in these cases must be fully explained and supported with adequate documentation. Stated reasons that will not be acceptable include: A replacement firm has been recruited to perform the same work under terms more advantageous to you; issues about performance by the committed DBE were disputed (unless every reasonable effort has already been made to have the issues resolved or mediated satisfactorily); a DBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

- c. Your notification should include the name, address and principal official of any proposed substitute DBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same DBE affidavits, documents, and Letter of Intent which are required of bidders, as enumerated in Section , "Good Faith Efforts."
- d. The City will evaluate the submitted documentation, and respond within 15 business days to the request for approval of a substitution. The response may be in the form of a request for more information, or a request for an interview to clarify or mediate the problem. In the case

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- of an expressed emergency need to receive the necessary decision for the sake of job progress, the City will instead respond as soon as practicable.
- e. Actual substitution of a replacement DBE to fulfill the Contract DBE Participation Goal may not be made before City approval is given of the acceptability of the substitute DBE. A subcontract with the substitute DBE Subcontractor must be executed within five business days following the City's approval, and a copy of the DBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.
  - f. The City will not approve extra payment for escalated costs incurred by you when a substitution of subcontractors becomes necessary for you to comply with the Contract DBE Participation Goal.
2. The Contract Compliance Administrator will make the initial determination of whether you have exercised Good Faith Efforts.

**J. Non-Compliance**

1. Each of the following constitutes a material breach of this contract and entitles the City to declare a default, terminate the Contract, and exercise those remedies provided for in the Contract, at law or in equity:
  - a. failure to make good faith efforts to satisfy the Contract DBE Participation Goal you proposed and accepted by the City; and
  - b. your, or a subcontractor's, or supplier's, disqualification as a DBE, where the DBE status was a factor in the Contract award and was misrepresented by you.
2. If you are determined by the City not to have been involved in any misrepresentation of the status of a disqualified subcontractor or supplier, you must discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified DBE as its replacement. Furthermore, your continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. The City may withhold payments due to you until corrective action is taken.
3. Your failure to comply with the Contract DBE Participation Goal you proposed and accepted by the City, or failure to comply with the provisions of Section , "DBE Substitutions," will entitle the affected DBEs to recover from you damages suffered by these DBEs as a result of such under- or non-utilization, but this provision will not apply to the extent the under- or non-utilization occurs pursuant to Good Faith Efforts approved by the City. See Section, "Arbitration."
4. For contracts funded in whole, or in part, by the Federal Highway Administration, the Federal Transit Administration, or IDOT: When the Contract requirements are completed, if the City has determined that you failed to comply with the Contract DBE Participation Goal you proposed and accepted by the City, the City will thereby be damaged in the failure to provide the benefit of participation to DBEs to the degree set forth in this Article . Therefore, in such case of non-compliance, the City will deduct as liquidated damages cumulative amounts computed as follows:

For each one percent (or fraction thereof) of shortfall toward the Contract DBE Participation Goal, one percent of the base bid for this contract shall be surrendered by you to the City in payment as liquidated damages.

**K. Arbitration (FAA Funded Contracts)**

1. You consent that any disputes between you and any affected DBE regarding damages as a result of your under- or non-utilization of the DBE on any contract funded, in whole or in part, by the Federal Aviation Administration may, at the sole discretion of the DBE, be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by a prevailing DBE in accordance with applicable City regulations. This provision is intended for the benefit of any DBEs

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affected by under- or non-utilization and grants them specific third party beneficiary rights. In cases where deemed appropriate by the Contract Compliance Administrator, notification of a dispute by the affected DBE or prime contractor may lead to the withholding of final contract payouts until the City receives a copy of the final arbitration decision. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including those contained in a subcontract, suborder or communicated orally between you and a DBE.

2. If requested by the DBE, the DBE has the right to arbitrate. A DBE desiring to arbitrate must contact you in writing to initiate the arbitration process. Except as otherwise agreed to in writing by the affected parties, subject to the limitation contained in the last sentence of the previous paragraph, within 10 days of your receiving notification of the intent to arbitrate from the DBE the above-described dispute must be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations must be initiated by the DBE filing a demand for arbitration with the AAA; must be conducted by the AAA; and held in Chicago, Illinois.
3. All fees of the arbitrator are the initial responsibility of the DBE; the arbitrator, however, is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing DBE.
4. The DBE must send the City a copy of the "Demand for Arbitration" within 10 days after it is filed with the AAA. The DBE also must send the City a copy of the decision of the arbitrator within 10 days of receiving the decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**L. Record Keeping**

You must maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period of at least five years after Final Completion and Acceptance of the Work. You grant full access to these records to the City, federal or State authorities in this Project, the U.S. Department of Justice, or any of their duly authorized representatives.

**M. Resource Agencies**

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

**U.S. Small Business Administration**  
500 W. Madison Street, Suite 1250  
Chicago, Illinois 60601  
Attention: Robert Conner  
(312) 353-4528

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

**S. B. A. - Procurement Assistance**  
Robert P. Murphy, Area Director  
500 W. Madison Street, Suite 1250  
Chicago, Illinois 60661  
Attention: Linda Jones  
(312) 353-7381

Project information; general DBE information; Directory of Certified Disadvantaged, Minority and Women Business Enterprises; Directory of local and out-of-state construction and design DBEs:

**City of Chicago  
Office of Vendor Relations**  
City Hall - Room 403  
Chicago, Illinois 60602

**City of Chicago  
Office of Business Development**  
City Hall - Room 403  
Chicago, Illinois 60602



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Attention: Glenn Bennett  
(312) 744-7655

Attention: Lillie Cooper  
(312) 744-1896

City of Chicago Department of Procurement Services website: [www.cityofchicago.org/purchasing](http://www.cityofchicago.org/purchasing) .

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

**National Minority Suppliers  
Development Council, Inc.**

1040 Avenue of the Americas, 2nd Floor  
New York, New York 10018  
Attention: Harriet R. Michel  
(212) 944-2430

**Chicago Minority Business  
Development Council**

11 South LaSalle - Suite 850  
Chicago, Illinois 60603  
Attention: Tracye Smith  
(312) 263-0105

**N. Prime Contractor Assistance**

You should yourself assist DBEs in overcoming barriers to program participation. The following instruments of assistance, for example, should be used as applicable:

1. Developing solicitations of sub-contract bids so as to increase potential DBE participation. This can take the form of breaking down large subcontracts into smaller ones, and of issuing notice of solicitations in a timely manner.
2. Providing technical assistance and guidance in the bidding, estimating and scheduling processes.
3. Considering purchasing supplies and/or leasing the required equipment for a job, then subcontracting only for the expertise required to perform the Work
4. Providing accelerated payments or establishing pro-rated payment and delivery schedules so as to minimize cash flow problems faced by small firms.
5. Providing, waiving or reducing Subcontractor bonding requirements; allowing stage bonding (bonding carried over from one project stage to the next).
6. Providing a pre-bid conference for potential Subcontractors.

In addition to the employment of DBEs, you should consider the utilization of DBEs in fields indirectly related to the Contract, such as banking, office equipment sales, vehicles sales, mechanical repair, legal and accounting services, building security, graphics and advertising.

**O. Equal Employment Opportunity**

Compliance with DBE requirements will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as specified elsewhere in this Contract and as they relate to your and your Subcontractors' obligations.

[Attachment A to Article begins on next page]

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**Attachment A - Assist Agencies**

African American Contractors Association  
3901 S. State  
Chicago, IL 60653  
Phone #: (312) 915-5960  
Fax #: (312) 567-9919  
Web: none  
Email: omaraaca@hotmail.com  
Attn: Omar Shareef, President

Chicago Minority Business Development  
Council, Inc.  
1 East Wacker Drive  
Suite 1200  
Chicago, IL 60601  
Phone #: (312) 755-8880  
Fax #: (312) 755-8890  
Web: www.cmbdc.org  
Attn: Tracye Smith, Executive Director

Asian American Alliance  
222 W. Cermak Road  
Suite 303  
Chicago, IL 60616  
Phone #: (773) 293-1249  
Fax #: (773) 293-3642  
Web: www.asianamericanalliance.com  
Email: ctakada@asianamericanalliance.com  
Attn: Mitch Schneider, Executive Director

Chicago Urban League  
220 S. State Street  
11th Floor  
Chicago, IL 60604  
Phone #: (312) 692-0766 Ext. 256  
Fax #: (312) 692-0769  
Web: www.cul-chicago.org  
Email: jarchie@cul-chicago.org  
Attn: Joan Archie, Director of  
Employment, Counseling & Training

Association of Asian Construction Enterprises  
333 N. Ogden Avenue  
Chicago, IL 60607  
Phone #: (312) 563-0746  
Fax #: (312) 666-1785  
Web: None  
Attn: Perry Nakachi, President

Cosmopolitan Chamber of Commerce  
560 West Lake St., Suite 5th Floor  
Chicago, IL 60661  
Phone #: (312) 786-0212  
Fax #: (312) 234-9807  
Web: www.cchamber.org  
Attn: Gloria Bell, Executive Director

Black Contractors United  
400 W. 76th Street  
Suite 200  
Chicago, IL 60620  
Phone #: (773) 483-4000  
Fax #: (773) 483-4150  
Web: www.blackcontractorsunited.com  
Attn: Florence Cox, Executive Director

Federation of Women Contractors  
5650 S. Archer Avenue  
Chicago, IL 60638  
Phone #: (312) 360-1122  
Fax #: (312) 360-0239  
Web: www.fwcchicago.com/

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Attn: Beth Doria, Executive Director

Phone #: (312) 322-0990

Fax #: (312) 461-0238

Hispanic American Contractors Industry  
Association (HACIA)

Web: [www.nawbochicago.org](http://www.nawbochicago.org)

Email: [info@nawbochicago.com](mailto:info@nawbochicago.com)

901 West Jackson Boulevard

Attn: Clair Gregoire, President

Suite 205

Chicago, IL 60607

Rainbow/PUSH Coalition

Phone #: (312) 666-5910

930 E. 50th Street

Fax #: (312) 666-5692

Chicago, IL 60615

Web: [www.haciaworks.org](http://www.haciaworks.org)

Phone #: (773) 256-2728

Email: [mailto:csatoy@hacia works.org](mailto:mailto:csatoy@hacia works.org)

Fax #: (773) 256-2751

Attn: Cesar A. Santoy, Executive Director

Web: [www.rainbowpush.org](http://www.rainbowpush.org)

Latin American Chamber of Commerce

Attn: Donna Gaines, Deputy Director Trade  
Bureau

3512 West Fullerton Avenue

Chicago, IL 60647

Suburban Black Contractors

Phone #: (773) 252-5211

848 Dodge Avenue

Fax #: (773) 252-7065

Suite 347

Web:

Evanston, IL 60202

[www.latinamericanchamberofcommerce.com](http://www.latinamericanchamberofcommerce.com)

Phone #: (847) 359-5356

Email: [lacc@latinamericanchamberofcommerce](mailto:lacc@latinamericanchamberofcommerce)

Fax #: (847) 359-5367

Attn: Anthony Guillen, Director

Web: None

Attn: Larry Bullock, President

Illinois Hispanic Chamber of Commerce  
(Formerly MACC)

33 N. LaSalle Street

Successful Independent Network Association  
(SIN)

Suite 1720

2100 W. Washington

Chicago, IL 60602

Chicago, IL 60612

Phone #: (312) 372-3010

Phone #: (312) 850-1665

Fax #: (312) 372-3403

Fax #: (312) 850-1665

Web: [www.maccbusiness.com](http://www.maccbusiness.com)

E-mail: [dianejonesin@yahoo.com](mailto:dianejonesin@yahoo.com)

Attn: Juan Ochoa, President & CEO

Attn: Diane Jones, President

Attn: Arnette King, General Manager

National Association of Women Business  
Owners

Chicago Chapter

Triton College

330 S. Wells Street

Small Business Development Center

Suite 1110

2000 Fifth Avenue

Chicago, IL 60606

Room R-201

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River Grove, IL 60171  
Phone #: (708) 456-0300 Ext. 3714

1210 W. Rosedale  
Chicago, IL 60660  
Phone #: (773) 303-0167  
Fax #: (773) 303-0168

Uptown Center Hull House  
4520 N. Beacon Street  
Chicago, IL 60640

Web: <http://www.glchamber.org/>  
Christee Snell, Executive Director

Phone #: (773) 561-3500  
Fax #: (773) 561-3507

REV. 4/12/05

Web: [www.hullhouse.org/edu.htm](http://www.hullhouse.org/edu.htm)  
EMAIL: <mailto:croeschley@hullhouse.org>  
Attn: Curt Roeschley, Director  
Small Business Development

**END OF ATTACHMENT A**  
**ATTACHMENT B IS LOCATED IN BOOK 2**  
**(OR IS AVAILABLE**  
**FROM THE DEPARTMENT OF**  
**PROCUREMENT SERVICES)**

Women's Business Development Center  
8 South Michigan Avenue  
Suite 400  
Chicago, IL 60603  
Phone #: (312) 853-3477  
Fax #: (312) 853-0145  
Web: [www.wbdc.org](http://www.wbdc.org)  
EMAIL: <mailto:hrtatner@wbdc.org>  
Attn: Hedy Ratner, Co-President  
Carol Dougal, Co-President

The Chicago Area Gay & Lesbian Chamber of  
Commerce

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**XXV. DISADVANTAGED BUSINESS POLICY**

- A. Nondiscrimination You and your Subcontractors must not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. You must carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Your failure to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. You must include the provision set forth in this paragraph in all of its subcontracts.
- B. DBE Financial Institutions You are encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of your willingness to do business with DBEs. Information about such institutions is available in the City of Chicago's DBE Program document, which is available on-line at [www.ci.chi.il.us/Purchasing](http://www.ci.chi.il.us/Purchasing); a hard copy of the DBE Program document is available at the City of Chicago, Department of Procurement Services, City Hall, 121 N. LaSalle, Room 403, Chicago, IL 60602.
- C. Prompt Payment
1. Timely Progress Payments, Return of Subcontractor Retainage
    - a. You must remit payment to your Subcontractors listed on a pay request to the City within 5 business days after receiving payment on the pay request from the City. You must require its Subcontractors on the project to pay their lower tier subcontractors within 5 business days after receiving payment from you; you must state these requirements in all subcontracts and purchase orders. The obligation to make prompt payment to subcontractors is a continuing condition of your participation on the project that is the subject of this Contract, and of its Subcontractors.
    - b. Subject to the provisions of Section , below, you must return retainage, if any, to each Subcontractor within 14 days after the Subcontractor's work is in place in the project or the materials delivered to the City (or off-site, if this Contract permits payment for off-site delivery), regardless of whether the project is finished and whether you have received payment from the City for the retainage withheld.
    - c. For prompt payment, the term "subcontractor" is intended to include suppliers. For purposes of calculating the date by which payment to Subcontractors must be made, payment is considered received 6 days after the check date. To the extent feasible, to facilitate the flow of information to Subcontractors, City will post at the Project Manager office and maintain at the Records and Estimate Section of the Department and at the Resident Engineer's office a list of your payment requests, including the Subcontractors identified in them, submitted to the City Comptroller for payment and the date of payments made to you by City.
    - d. If you fail 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.
  2. Timely Submittal of Pay Requests; Disputes
    - a. You must not delay or refuse to timely submit pay requests for a subcontractor's work or materials; the City may construe such delay or refusal as your failure to act in good faith. "Timely," in this context, means within 30 days after the portion of the Subcontractor's work that the subcontractor has invoiced is in place in the project or the materials delivered to the City (or off-site, if this Contract permits payment for off-site delivery). In addition, you must not delay or postpone payment for any undisputed portion of a subcontractor's invoice or in connection with claims or disputes involving different pay requests on the same project or different projects.
    - b. If, despite your due diligence with respect to the performance of a Subcontractor for which a pay request is submitted, new information is received, after submitting the pay request to the City, that discloses that the Subcontractor's work or materials were not in

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accordance with the Contract requirements, or that the Subcontractor has committed fraud or is otherwise not entitled to the payment sought, you may delay or postpone payment to the subcontractor, but only if all of these conditions are met:

- (1) The Subcontractor's non-complying work or materials are those that are the subject of the particular pay request;
  - (2) You are acting in good faith and not in retaliation for a Subcontractor's exercising legal or contractual rights;
- c. When a Subcontractor has completed its work on the project, if you determine that a Subcontractor's work or materials were not in accordance with the Contract requirements, or the Subcontractor has committed fraud or is otherwise not entitled to the payment sought, you may delay or postpone timely return of retainage to the Subcontractor, but only if all of these conditions are met:
- (1) You have substantial grounds for and have acted reasonably in making your determination;
  - (2) You are acting in good faith and not in retaliation for a Subcontractor's exercising legal or contractual rights.

3. Special Remedies for Non-Compliance with Prompt Payment

- a. If you do not pay any Subcontractor listed on a pay request or returned a Subcontractor's retainage within the time limits required under this prompt payment provision, and you have not met the applicable notification and written consent requirements above, you must pay the Subcontractor an additional 2% of the unpaid portion of any such payment each month, prorated per diem for any partial month, that you fail or refuse to pay the Subcontractor, and your terms with your Subcontractors must provide for this additional payment to be made.
- b. These provisions do not confer any rights in Subcontractors against the City. Nothing in this Section is to be construed to limit the rights of and remedies available to the City, including various rights under the General Conditions.
- c. If you are found not to be making timely payments to subcontractors/ suppliers on a continuous basis, City may consider this to be an event of default under the terms of this Contract.

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

- A. Your attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth in this Contract.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for your aggregate workforce in each trade on all construction work in the covered area, are as follows:

Minority Group Employment Goal for each trade . . . . 19.6%

Female Employment Goal for each trade . . . . . 6.9%

These goals are applicable to all your construction Work (whether or not it is federal or federally assisted) performed in the covered area. If you perform construction work in a geographical area located outside of the covered area, you must apply the goals established for such geographical area where the Work is actually performed. With regard to this second area, you also are subject to the goals for both your federally involved and non-federally involved construction.

Your compliance with the Executive Order and the regulations in 41 CFR Part 60-4 is based on your implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and your efforts to meet the goals established for the geographical area where this Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the duration of the Contract, and in

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each trade; and you must make a good faith effort to employ minorities and women evenly on each of your projects. The transfer of minority or female employees or trainees from contractor to contractor, or from project to project for the sole purpose of meeting your goals is a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- A. You must provide written notification to the Director of the Office of Federal Contract Compliance Programs (U.S. Department of Labor, Office of Federal Contract Compliance, Programs, 230 South Dearborn Street - 39<sup>th</sup> Floor, Chicago, IL 60604) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract. The notification must list the name, address and telephone number of the Subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- B. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" includes the City of Chicago, Cook, DuPage, Kane, Lake, McHenry, and Will Counties (Standard Metropolitan Statistical Area).

**XXVII. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract, you:

- A. Will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. You will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action must include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. You must post in conspicuous places, available to employees and applicants for employment, notices to be provide by the contracting officer setting forth the provisions of this nondiscrimination clause.
- B. Will, in all solicitations or advertisements for employees placed by you or on your behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. Will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of your commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and must post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. Will comply with all provisions of Executive Order No. 11246 or September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. Will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to your books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- F. In the event of your noncompliance with the nondiscrimination clause of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and you may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No, 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. You will include the provisions of the above Paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that the provisions will be binding upon each subcontractor or vendor. You will take such action with respect to any

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subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. If, however, you become involved in, or are threatened with, litigation with a subcontractor or vendor as a result of such direction by the federal government contracting agency, you may request the United States to enter into such litigation to protect the interests of the United States.

**XXVIII. OTHER FEDERAL PROVISIONS**

**A. False or Fraudulent Statements and Claims**

1. You recognize that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC §§ 3081 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to your actions pertaining to the Contract. Accordingly, by signing the Contract, you certify or affirm the truthfulness and accuracy of any statement you have made, you make, or you may make pertaining to the Contract, including any invoice for your services. In addition to other penalties that may be applicable, you also acknowledge that if you make a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on you to the extent the federal government deems appropriate.
2. You also acknowledge that if you make a false, fictitious, or fraudulent claim, statement, submission, or certification to the City or federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 USC § 5307, the Government reserves the right to impose on you the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1), to the extent the federal government deems appropriate.

**B. Federal Interest in Patents**

1. General. If any invention, improvement, or discovery of yours is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, you must notify City immediately and provide a detailed report.
2. Federal Rights - Unless the federal government later makes a contrary determination in writing, the rights and responsibilities of the City, you, and the federal government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations, including any waiver of them; and irrespective of your status or the status of any Subcontractor at any tier (e.g., a large business, small business, non-profit organization, institution of higher education, individual), you will transmit to the federal government those rights due the federal government in any invention resulting from the Contract.

**C. Federal Interest in Data and Copyrights**

1. Definition

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

2. Federal Restrictions

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



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until such time as the federal government may have either released or approved the release of such data to the public.

3. Federal Rights in Data and Copyrights

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

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

4. Special Federal Rights for Planning Research and Development Projects

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

5. Hold Harmless

Unless prohibited by state law, upon request by the City or the federal government, you must hold harmless the City and the federal government and their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by you of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. You are not required to indemnify the City or federal government for any such liability arising out of the wrongful acts of employees or agents of the City or federal government.

6. Restrictions on Access to Patent Rights

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

7. Application on Materials Incorporated into Project

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

D. No Exclusionary or Discriminatory Specifications

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

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E. Cargo Preference - Use of United States Flag Vessels

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

F. Fly America

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

G. No Federal Government Obligations to Third Parties

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

H. Allowable Costs

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

I. Contract Work Hours and Safety Standards Act

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

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

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accordance with US DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.

J. Seismic Safety

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

K. Buy America

You must comply with the provisions of 49 CFR 5323(j) and 49 CFR Part 661, which generally require that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded project are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60% domestic content.

You must submit to the City the appropriate Buy America certification with you bid on all FTA-funded Contracts, except those subject to a general waiver. Bids that are not accompanied by a completed Buy America certification are subject to rejection as non-responsive. This requirement does not apply to lower tier Subcontractors.

You must cooperate in any investigation of your compliance with your certification and must, upon request by the FTA or the City, provide documentation of your compliance in a form satisfactory to the requesting party. The documentation must be provided within 15 business days after the request if the request is received directly from the FTA and within 10 business days after the request is received from the City. You must provide any additional information requested by either the FTA or the City within five business days after the request for the additional information. You must immediately notify the City in writing of any request that you receive directly from the FTA and must, except to the extent that information is exempted as confidential or proprietary under 49 CFR 661.15(e), provide the City with a copy of your response to any direct request from the FTA.

Your failure to comply with your certification or to perform your obligations to document such compliance is an event of default under this Contract. In addition, a false certification is a criminal act in violation of 18 USC 1001.

The foregoing is in no way intended to limit your obligations under applicable statutes, ordinances, and regulations.

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

A. As used in these specifications:

1. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
2. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
3. "Employer Identification Number" means the federal Social Security number used on the Employer's Quarterly federal Tax Return, U.S. Treasury Department Form 941.

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4. "Minority" includes:
- a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - d. American Indian or Alaskan Native (all persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. Whenever you, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, you must physically include in each subcontract in excess of \$10,000 the provisions of these specification and the Notice that contains the applicable goals for minority and female participation and that is set forth in the solicitations from which this contract resulted.
- C. If you are participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) must be in accordance with the Plan for those trades that have unions participating in the Plan. You must be able to demonstrate your participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. You must implement the specific affirmative action standards provided in paragraphs \*G.1. through 16 of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization you should reasonably be able to achieve in each construction trade in which you have employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract must apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. You are expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom you have a collective bargaining agreement, to refer either minorities or women excuses your obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, you must employ such apprentices and trainees during the training period, and you must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. You must take specific affirmative action to ensure equal employment opportunity. The evaluation of your compliance with these specifications will be based upon your effort to achieve maximum results from your actions. You must document these efforts fully, and must implement affirmative action steps at least as extensive as the following:
1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which your employees are assigned to work. You, where

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- possible, will assign two or more women to each construction project. You must specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out your obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when you or your unions have employment opportunities available, and maintain a record of the organization's responses.
  3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If the individual was sent to the union hiring hall for referral and was not referred back to you or the union or, if referred, not employed by you, this must be documented in the file with reason therefor, along with whatever additional actions you may have taken.
  4. Provide immediate written notification to the director when the union or unions with which you have a collective bargaining agreement have not referred to you a minority person or woman that you sent, or when you have other information that the union referral process has impeded your efforts to meet your obligations.
  5. Develop on-the-job training opportunities and/or participate in training programs for the area that expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to your employment needs, especially those programs funded or approved by the Department of Labor. You must provide notice of these programs to the sources complied under G.2. above.
  6. Disseminate your EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting you in meeting your EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
  7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  8. Disseminate your EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing your EEO policy with other contractors and Subcontractors with whom you anticipate doing business.
  9. Direct your recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving your recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, you must send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
  10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

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11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and your obligations under these specifications are being carried out.
  14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities must be provided to assure privacy between the sexes.
  15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  16. Conduct a review, at least annually of all supervisor's adherence to and performance under your EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations (G.1. through 16.). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which you are a member and participant, may be asserted as fulfilling any one or more of its obligations under G.1. through 16 of these Specifications but only if you actively participate in the group, make every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensure that the concrete benefits of the program are reflected in your minority and female workforce participation, make a good faith effort to meet your individual participation, make a good faith effort to meet your individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of you. The obligation to comply, however, is yours and failure of such a group to fulfill an obligation is not a defense for your noncompliance.
- I. A single goal for minorities and a separate single goal for women have been established. You, however, are required to provide equal employment opportunity and to make affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, you may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though you have achieved its goals for women generally, you may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. You must not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- K. You must not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- L. You must carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties is in violation of these specifications and Executive Order 11246, as amended.
- M. You, in fulfilling your obligations under these specifications, must implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G. of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If you fail to comply with the requirements of the Executive Order, the implementing regulations, or these Specifications, the Director must proceed in accordance with 41 CFR 60-4.8.

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- N. You must designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions of this Section as may be required by Government and to keep records. Records must at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors are not required to maintain separate records.
- O. Nothing provided in this Contract may be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

**I. GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in
3. any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
4. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
5. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:  
Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.
6. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
7. **Selection of Labor:** During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

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**II. NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
  - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
  - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.



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4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
  - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
  - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
  - a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
  - a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
  - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of

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apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
  - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
  - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

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- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
- The number of minority and non-minority group members and women employed in each work classification on the project;
  - The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
  - The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
  - The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

**III. NONSEGREGATED FACILITIES**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

**IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

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(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

- the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
- the additional classification is utilized in the area by the construction industry;
- the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- with respect to helpers, when such a classification prevails in the area in which the work is performed.

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- a. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- b. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

**3. Payment of Fringe Benefits:**

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

- a. Apprentices:
  - ii. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
  - iii. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee

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

- iv. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- v. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.
- e. Trainees:
  - i. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
  - ii. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
  - iii. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
  - iv. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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- f.                   Helpers:
- Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- 5. Apprentices and Trainees (Programs of the U.S. DOT):**
- Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.
- 6. Withholding:**
- The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- 7. Overtime Requirements:**
- No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- 8. Violation:**
- Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.
- 9. Withholding for Unpaid Wages and Liquidated Damages:**

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The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

**10. Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

**11. Payrolls and Payroll Records:**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or



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supervises the payment of the persons employed under the contract and shall certify the following:

- i. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  - ii. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  - iii. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12

**VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
  - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
  - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
  - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

**VII. SUBLETTING OR ASSIGNING THE CONTRACT**

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1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

**VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

**IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

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

- *"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*
- *Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*
- *Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

**X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

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4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or

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Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
  - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

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

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- a. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- b. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- c. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- d. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- e. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- f. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- g. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:**

- 1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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\* \* \* \* \*

**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  - a. To the extent that qualified persons regularly residing in the area are not available.
  - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on

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which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.
5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

-END-