

REQUEST FOR QUALIFICATIONS
FOR
DESIGN-BUILD SERVICES
FOR SOUTH AIRFIELD DETENTION CONSOLIDATION
O'HARE INTERNATIONAL AIRPORT

Specification No. 924070

Required for use by:

CITY OF CHICAGO
(Chicago Department of Aviation)



All Responses and other communications must be addressed and returned to:

Shannon E. Andrews, Chief Procurement Officer
Attention: Tom Magno, Senior Procurement Specialist
City Hall, Department of Procurement Services, Bid & Bond Room 103
121 North LaSalle Street
Chicago, Illinois 60602

**ALL RESPONSES MUST BE RECEIVED BY 4:00 P.M., CENTRAL TIME,
ON MARCH 1, 2019.**

RAHM EMANUEL
MAYOR

SHANNON E. ANDREWS
CHIEF PROCUREMENT OFFICER

SUBMITTAL CHECKLIST

This checklist is provided for ease of review of the Respondent's submittal content; however, it is the responsibility of the Respondent to ensure that all the required material requested in this RFQ is addressed and included in the Respondent's submittal.

Volume I – RFQ Required Content

- ☐ Cover Letter
- ☐ Executive Summary and Associated Information
 - ☐ Respondent's Legal Entity Contracting Information
 - ☐ Joint Venture Agreement including Schedule B and Disclosures as appropriate
 - ☐ LLC Operating Agreement and Disclosures as appropriate
 - ☐ Licensing Information
- ☐ Company Profile
- ☐ Project Experience
- ☐ Expertise and Experience of Key Staff/Resumes
- ☐ MBE/WBE Participation Narrative
- ☐ References
- ☐ Safety Program TOC, EMR Worksheet, and Safety Questionnaire
- ☐ Quality Management Narrative & TOC
- ☐ Schedule B and JV agreement, if appropriate

Volume II – RFQ Required Content

- ☐ Conflict of Interests
- ☐ Respondent's Corporate History
- ☐ Legal Actions Form and other Required Information
- ☐ Financial Statements
- ☐ Economic Disclosure Statement and Affidavit
- ☐ MBE/WBE Letter of Commitment
- ☐ Insurance Certificate
- ☐ Guarantor Acknowledgement
- ☐ Guarantor Certificate of Acknowledgement

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PART 2 - SAMPLE FORM OF AGREEMENT AND EXHIBITS TO THE AGREEMENT

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I. GENERAL INFORMATION

The City of Chicago ("City") through its Chicago Department of Aviation ("CDA" or "Department"), invites the submission of Statements of Qualifications ("Qualifications" or "SOQs") for Design Build Services ("DBS"); which includes engineering, design, permitting, construction, testing and commissioning services for the implementation of the project titled "**South Airfield Detention Consolidation**" ("Project") as defined in general terms herein. The design and construction services rendered by the Design-Builder shall result in a complete, functional, and operable project with a minimum 75-year design life as set forth on the attached **Exhibit 1 – Scope of Services** for the development of the Project.

As further defined in Exhibit 1, the Project consists of the expansion of the South Detention Basin, the hydraulic connection between the interception of the drainage system currently outflowing to the Central Basin, and the backfilling of the Central Basin. The Project will be subject to multiple requirements including, but not limited to those associated with being located within an operating airfield, environmental and permitting requirements, and providing adequate storm drainage protection for the Airport facilities at all times. The connection from the interception of the tributary drainage system at the Central Basin to the South Basin will be through a shallow soft ground tunnel. Preliminary construction cost estimates for this project are in the range from \$180 million to \$210 million.

It is the interest of the CDA to ensure that respondents to this solicitation be prepared to offer innovative and cost efficient ideas and concepts to accomplish the project in a safe and expedited fashion.

The CDA is currently developing additional technical criteria serving as a framework for the evaluation of Technical and Price Proposals as defined below.

The selection process for this design build solicitation is a two-step process, Step 1 — Evaluation of Qualifications and Step 2 — Evaluation of Technical and Price Proposal.

- Step 1 is the evaluation of a design-build team's qualifications based on the team's completed submittal. An Evaluation Committee will qualify no fewer than three (3) responsive and responsible firms and will determine the maximum number of responsive and responsible firms to advance to Step 2 (the "Advancing Firms").
- Step 2 is the evaluation of competitive Technical and Price Proposals from those Advancing Firms who choose to offer a responsive and responsible proposal.

Technical documents will be issued to Advancing Firms with a Request for Proposals (RFP) and will include drawings, specifications, a geotechnical data report, a geotechnical baseline report, permitting information, and other technical data.

"**Respondent(s)**" means the entities that submit Qualifications in response to this RFQ. The Respondent(s) awarded an Agreement pursuant to this RFQ, if any, are sometimes referred to herein as "**Design-Builder**" or "**Contractor**". "**Agreement**" refers to an agreement

awarded to a Design-Builder for the Project.

The Design-Builder, along with other participants in the development of the Airport's O'Hare 21 Program, will provide the core programs for achieving the CDA's goal of benefits to Chicago. There are two main focus areas that will result from this critical infrastructure program: 1) maximizing M/WBE participation and company development and 2) building an engagement, recruiting, training and pre-apprenticeship program for Chicago residents, that will successfully employ and develop workers from socio-economically disadvantaged neighborhoods as identified by the Department of Planning and Development pursuant to Section 2-92-390 of the Municipal Code of Chicago.

A. Scope of Services

The services requested in this RFQ are described more fully in Exhibit 1 to this RFQ.

B. Communications; Pre-Submittal Conference; and Document Availability

1. Communications between the City and Respondents

Respondents must communicate only with the Department of Procurement Services ("DPS") regarding this RFQ. All questions or requests for clarification must be submitted to the following e-mail address: cdaquestions@cityofchicago.org. The subject line of the email must clearly indicate that the contents are "Questions and Requests for Clarification" about the RFQ, and must refer to "RFQ for Design-Build Services for the South Airfield Detention Consolidation Project at O'Hare International Airport", Specification No. **924070**. The specification number must appear in the subject line of the e-mail. No telephone calls will be accepted.

All questions and requests for clarifications must be submitted no later than 4:00 p.m. Central Time on **February 5, 2019** or no response will be provided except at the sole discretion of the Chief Procurement Officer. A Respondent that deviates from any of these requirements is subject to immediate disqualification from this RFQ process.

2. Pre-Submittal Conference/Site Visit

The City will hold a pre-submittal conference at the Aviation Administration Building located at 10510 West Zemke Road, Chicago, Illinois 60666 on **January 29, 2019** at 10:00 a.m. Central Time. The City will address questions regarding the RFQ at the pre-submittal conference, and may respond both to questions or requests for clarification submitted on the day of the conference, and to questions submitted prior to the conference date. However, Respondent may only rely on written addenda and/or clarifications. The City of Chicago accepts no responsibility for timely delivery of materials, and Respondents are solely responsible for acquiring necessary information, addenda and/or materials.

3. RFQ Document Availability, Information Resources

Respondents should obtain this RFQ from the Bid & Bond Room located at City Hall, 121 N. LaSalle St., Room 103, Chicago, Illinois 60602.

Respondents may request the Bid & Bond Room personnel mail them a copy of the RFQ by providing the Bid & Bond Room a FedEx account number or make arrangements with Bid & Bond Room personnel to have a package ready for pickup by another courier service. The Bid & Bond Room telephone number is (312) 744-9773. The City accepts no responsibility for the timely delivery of materials.

Alternatively, Respondents may download the RFQ from URL address: https://www.cityofchicago.org/city/en/depts/dps/provdrs/contract/svcs/current_bid_opportunities.html. **All Respondents who choose to download the RFQ are responsible for checking this website for clarifications and/or addenda.**

If Respondent chooses to download the RFQ document, the Respondent must contact the Bid & Bond Room by faxing a legible copy of Respondent's business card, referencing Specification No. 924070 to (312) 744-5611 or by calling the Bid & Bond Room at (312) 744-9773 to register Respondent's company as an RFQ document holder, which will better enable Respondent to receive any future clarifications and/or addenda related to this RFQ. Respondents are responsible for obtaining all RFQ materials, including any Addenda.

Under no circumstances shall failure to obtain clarifications and/or addenda relieve a Respondent from being bound by any additional terms and conditions set forth in the clarifications and/or addenda, or from considering additional information contained therein in preparing a Statement of Qualifications. Furthermore, failure to obtain any clarification and/or addenda shall not be valid grounds for a protest against award(s) made under this RFQ.

C. Deadline and Procedures for Submitting Statement of Qualifications ("Qualifications")

1. Statement of Qualifications must be received by the Bid & Bond Room no later than 4:00 p.m. Central Time, on **March 1, 2019**.
2. The City may not accept submittals that are not received by the date and time set forth above. Only the City's Chief Procurement Officer, at her sole discretion, will determine whether to accept a submittal received after the due date and time.

Failure by a messenger delivery service or printing service to meet the required deadline will not excuse the Respondent from the deadline requirement of this RFQ. Hand-carried Proposals must be received in the depository located in the Bid & Bond Room 103 at City Hall. The actual time of the receipt of all responses to this RFQ will be determined solely by the clock located in the Bid & Bond Room. It is the Respondent's sole responsibility to ensure that the response is received as required.

3. The Respondent submittals must be delivered to the following address:

Shannon E. Andrews, Chief Procurement Officer
Department of Procurement Services
Bid & Bond Room
Room 103, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Tom Magno

4. Respondents must submit one (1) original, two (2) paper copies, and fifteen (15) electronic copies of the Statement of Qualifications ("QUALIFICATIONS") on CD-ROM or thumb/flash drive in PDF format. The electronic (PDF) version of the submittal must be in the form of a bound and bookmarked file per Volume containing all sections of the Qualifications. Each CD-ROM or thumb/flash drive should contain all two Volumes of the Qualifications. The original Qualifications must be clearly marked as "ORIGINAL" and on all documents, requiring a signature must bear the original signature of Respondent's authorized signatory. Respondent must enclose all documents in sealed envelopes or boxes. Respondents must submit their Qualifications enclosed sealed envelopes, packages, or boxes, and addressed to the City of Chicago, Department of Procurement Services, Bid & Bond Room 103, City Hall, 121 North LaSalle Street, Chicago, IL 60602. Qualification packages in boxes must be dropped off in the Bid & Bond Room for date/time stamp during regular hours, 8:30 a.m. to 4:30 p.m. Central Time, Monday through Friday (except legal holidays) prior to the date and time advertised. The Bid & Bond Room can be reached at (312) 744-9773 between the hours of 8:30 a.m. to 4:30 p.m. Central Time, Monday through Friday (excluding legal holidays).

5. The outside of each sealed envelope or box must be labeled as follows:

Statement of Qualifications Enclosed
Statement of Qualifications RFQ for Design-Build Services for the South
Airfield Detention Consolidation Project at O'Hare International Airport
Specification No. **924070**
Due: 4:00 p.m. Central Time, **March 1, 2019**

Submitted by: _____
(Name of Respondent)

Package ____ of ____

The City's opening of Respondent's sealed envelope(s) or package(s) containing Qualifications shall neither be deemed nor constitute acceptance by the City of Respondent's Statement of Qualifications. The City reserves the right to open and inspect all such sealed envelope(s) or package(s), regardless if the same were submitted by the due date and time specified herein, for any purpose, including without limitation, determining the particular RFQ to which Respondent has responded, determining if the Statement of Qualifications was submitted by the date and time specified in this RFQ, and in order to determine a Respondent's return address.

D. Procurement Timetable

The timetable for the Step 1 selection process is summarized below. Note that these target dates are subject to change by the City.

Advertisement of Request for Qualifications	<u>January 22, 2019</u>
Pre-Submittal Conference.....	<u>January 29, 2019</u>
Question Cut-Off Date	<u>February 5, 2019</u>
Statement of Qualifications Due.....	<u>March 1, 2019</u>

The timetable for the Step 2 is summarized below. Note that these target dates are subject to change by the City.

Notification to Advancing Firms.....	<u>TBD</u>
RFP and Technical Documents Issued.....	<u>TBD</u>
Technical and Price Proposal Deadline.....	<u>TBD</u>

E. Conflicts of Interests

For the purposes of this Section E only, the term "Respondent" shall mean the entities that submit Qualifications in response to this RFQ. For the purposes of this section, the following definitions apply:

- "CARE Plus" or Chicago Airports Resources Enterprise Plus" means a joint venture, which serves as the Department's Owner Representative and Construction Manager for Capital Improvement Program projects.
- "Master Civil Engineer" means BPC Airport Partners, a limited liability company, which serves as the OMP's Master Civil Engineer.
- "CCA" means Connect Chicago Alliance, a joint venture, which serves as the TAPs Program Management Office (PMO).

- OMP PMO means DMJM Aviation Partners, a joint venture, which serves as the O'Hare Modernization Program's (OMP) Program Management Office.

Respondents will be subject to the following conflicts of interest rules:

1. The O'Hare 21 Program is very complex, which has changed how potential and real conflicts are presented and reviewed. The most important rule is that **no Engineering or Architectural firm in either a prime or sub-consultant role will have oversight or review of any design work or a construction management role for any project which they have worked on.** Generally, professional services firms providing design services for a facility cannot also be part of constructing the same facility.
2. CARE Plus, the Master Civil Engineer, OMP PMO and the PMO ("Covered Entity #1") are not eligible for consideration for award of the Agreement and may not participate on the Agreement as a subcontractor ("Ineligible Parties").
3. If Respondent is a subcontractor of one or more of the Ineligible Parties (Covered Entity #2) or the subcontractor is identified in the Conflicts Matrix, Attachment A.1, as having a "Definite Conflict of Interest" and intends to resolve a conflict by withdrawal from a conflicted contract, the subconsultant must provide documentation showing actual withdrawal from the conflicted contract, not merely an offer to withdraw contingent on the team moving forward. Please note also that some conflicts cannot be mitigated through withdrawal from a conflicting contract.
4. If Respondent proposes to use as one of its subcontractors any Covered Entity #2 as described above, Respondent must comply with the requirements set forth below to be eligible for consideration for award of an Agreement:
 - a. The Covered Entity #2 shall have no management role whatsoever in the Respondent; and
 - b. The Covered Entity #2 shall have no beneficial interest whatsoever in the Respondent; and
 - c. Respondent's SOQ shall propose to use Covered Entities #2 on no more than forty- nine percent (49%) of all Services under an Agreement; and
 - d. Respondent must provide an accurate and complete description of the conflict of interest and the measures the Respondent proposes to mitigate the effects of the conflict of interest.
5. Affiliated Relationship
 - a. If Respondent is an entity that has an Affiliated Relationship (as defined below) (Covered Entity #3), Respondent will be ineligible for consideration for award of an Agreement as a Consultant but may provide Services as a subcontractor in accordance with Section 4 above.
 - b. For purposes of this section, an "Affiliated Relationship" exists if the Respondent and any of the Ineligible Parties or any joint venture partner of the Ineligible Parties or any subcontractor of the Ineligible Parties have any common ownership, whether directly or indirectly (including, without limitation, if they are subsidiaries of the same parent company); however, if

any institutional investor owns less than 10% of both the Respondent and the Ineligible Party, joint venture partner of the Ineligible Party, and/or Covered Entity #2, such ownership will not render the relationship between the Respondent and the Ineligible Party, joint venture partner of the Ineligible Party, and/or Covered Entity #2 an Affiliated Relationship.

- c. If Respondent proposes to use any Covered Entity #3 as a subcontractor, the Respondent must comply with the requirements set forth below to be eligible for consideration for award of an Agreement.
 - i. The Covered Entity #3 shall have no management role whatsoever in the Respondent; and
 - ii. The Covered Entity #3 shall have no beneficial interest whatsoever in the Respondent; and
 - iii. Respondent's SOQ shall propose to use Covered Entities #3 on no more than forty-nine percent (49%) of all Services under an Agreement; and
 - iv. Respondent must provide an accurate and complete description of the conflict or apparent conflict and the measures that the Respondent proposes to mitigate the effects of the conflict.
- d. The CPO will make the determination of eligibility in his/her sole judgment based upon the requirements set forth above. The CPO's determination adverse to the Respondent shall be final unless the Respondent's SOQ contains a letter from the Covered Entity #3 agreeing to withdraw from Respondent's team in the event of such an adverse determination.

6. Covered Entity #1 Joint Venture Members

- a. The current joint venture partnerships working at CDA for Program Management and Construction Management are conflicted from pursuing the Engineering work as a joint venture. However, they are permitted to pursue the work as individual entities and may or may not have a conflict depending upon their other pursuits. For example, the Master Civil Engineer Joint Venture (BPC Airport Partners) is precluded from pursuing any contracts as the same joint venture entity. Any member of that joint venture may pursue the work as an individual firm, but they may or may not have a conflict depending on the nature of the contract and work scope. Similarly, the Care Plus Joint Venture may not pursue any of the contracts as the same joint venture, but may be able to pursue other projects as individual firms.
- b. Due to CCA and the DMJM Aviation Partners' role as the TAP and OMP PMOs, CCA and DMJM Aviation Partners' members are conflicted from pursuing the Engineering work, since they will have oversight of the TAP and OMP Programs.

7. Additional Ineligible Parties

If a Respondent, subcontractor to Respondent, or Respondent which has an entity with an Affiliated Relationship is awarded an Agreement under this RFQ for Lead

Design Services, they will then become an Ineligible Party for consideration of award of any Agreements for any current or future Program Management Services or Construction Manager Services (including Construction Manager At-Risk Services), which would fall under the management role of the Program Manager or the Construction Manager. Additional ineligible parties also include firms involved in the planning process which formulated the TAP development program including:

- a. Ricondo and Associates
- b. Landrum & Brown
- c. Entities that represented the Airlines during negotiations for the Use & Lease Agreement
- d. Any of the selected CMR teams and their subcontractors for the TAP (award pending)

8. Conflict of Interest Evaluations

- a. The Evaluation Committee ("EC") will consider any information regarding Respondent, including information contained in a Respondent's Proposal, that may indicate any conflicts (or potential conflicts) of interest which might compromise Respondent's ability to successfully perform the proposed Services or undermine the integrity of the competitive- procurement process. If any Respondent has provided any services for the City in researching, consulting, advising, drafting, or reviewing this RFQ or any other services related to this RFQ, such Respondent may be disqualified from further consideration.
- b. If a particular subconsultant is determined to have a conflict during the selection process or during the course of the project, teams may be asked to identify another certified subconsultant. Joint venture partners who are identified as having a conflict during the selection process, will disqualify their team – unless they are able to resolve the other project causing the conflict.
- c. Notwithstanding the above descriptions, Respondents are urged to be open and flexible in developing their teams. Given the fluid nature and magnitude of this program, conflicts may arise throughout the program that were not considered previously.
- d. The City reserves the right to evaluate potential conflicts of interests, if any, not set forth above that could present a conflict in the performance of the Services. With respect to the evaluation of potential conflicts of interest, the City also reserves the right to render a final decision on the eligibility of a particular Respondent to be considered for an award of an Agreement, all in a manner consistent with the best interests of the City.

9. Mitigation Plans should be submitted to Tom Magno and be received no later than February 5, 2019. The City will provide a response to said plan of action before February 14, 2019. Firms that fail to submit a mitigation plan may be disqualified from further consideration.

Tom Magno's email contact: Thomas.Magno@cityofchicago.org

10. Conflicts Matrix

Attachment A.1 is a Conflicts Matrix that covers all current and proposed Professional Services contracts at this time. For those projects which have been advertised and not awarded, joint ventures (Primes) and subconsultants should review the matrix. For projects that will be advertised in the future, the matrix will apply. The matrix is consistent with the current understanding of scopes of work.

Attachment A.1 - Conflicts Matrix

		Contracts Awarded												Contracts Pending Award												Contracts To Be Advertised		
		OMP DMJM Aviation Partners JV Entity	OMP DMJM Aviation Partners & Subs	BPC Individual Partners & Subs	OMP - WSP JV Partners & Subs	CARE+ JV Individual Partners & Subs	Existing A/E Task Order Services - FEDERAL - Prime or Sub (Spec. No. 980500)	Existing A/E Task Order Services -NON-FEDERAL- Prime or Subs (Spec. No. 98030)	Central Deicing Facility & Taxiway A/B - Lead Designer or Subs (Spec. No. 192597)	CDA Planning Contracts Subs	CCA Subconsultants	Quality Assurance Mat. Testing	Airline Subconsultants-Planners	CMAR JV (Spec. No. 376113)	CMAR Subs (Spec. No. 376113)	Master Architect or Master Architect JV (Spec. No. 428915)	Master Architect Subs (Spec. No. 428915)	A/E Task Order Services -FEDERAL- Prime or Subs (Spec. No. 180660)	A/E Task Order Services -NON-FEDERAL- Prime or Subs (Spec. No. 180580)	Target Market Engineering Task Order Services - NON-FEDERAL - Prime or Subs (Spec. No. 286644)	Lead Tunnel Designer & Engineer JV (Spec. No. 880169)	Lead Tunnel Designer & Engineer - Subs (Spec. No. 880169)	South Airfield Detention Consolidation JV (Spec 924070)	South Airfield Detention Consolidation - Subs (Spec 924070)	NON-FEDERAL - Target Market CM	NON-FEDERAL - CM Prime or Joint Venture	NON-FEDERAL - CM Subconsultants	
Contracts Pending Award		CMAR JV (Spec. No. 376113)																										
		CMAR Subs (Spec. No. 376113)																										
		Master Architect JV (Spec. No. 428915)																										
		Master Architect Subs (Spec. No. 428915)																										
		A/E Task Order Services -FEDERAL- Spec. No. 180660 Prime or Subs																										
		A/E Task Order Services -NON-FEDERAL- Spec. No. 180580 Prime or Subs																										
		Engineering Task Order Services - NON-FEDERAL - Spec. No. 286644																										
		Lead Tunnel Designer & Engineer JV (Spec. No. 880169)																										
		Lead Tunnel Designer & Engineer - Subs (Spec. No. 880169)																										
		South Airfield Detention Consolidation JV (Spec 924070)																										
	South Airfield Detention Consolidation - Subs (Spec 924070)																											
Contracts To Be Advertised		NON-FEDERAL - Target Market CM																										
		NON-FEDERAL - CM Prime or Joint Venture																										
		NON-FEDERAL - CM Subconsultants																										

- Notes:
- "Prime" refers to single Prime or any Joint Venture Partner.
 - "JV Entity" refers to the Joint Venture and not the JV Partners as individual firms.
 - "Subs" refers to subconsultants or subcontractors to the Prime.
 - In no case shall any designer (Prime or Sub) be involved with any CM or CMAR assignments on a project where they have performed design or design review activities.

	Definite Conflict of Interest; firm will not be allowed to participate not allowed to participate unless they remove themselves from conflicted contract.
	Potential Conflict of Interest; firm must submit a mitigation plan, or remove themselves from conflicted contract.
	No apparent Conflict of Interest, but combinations of positions could cause a conflict.
	Existing Contract (Contract Awarded)
	Future Contract (Contract Pending Award)
	Future Contract (Contract To Be Advertised)

F. Project Guarantor

Respondents are advised that the City is seeking a Design-Builder with financial strength sufficient to perform the Contract Services. The City will look to the financial strength of the Respondent and any proposed Guarantor in making its determination as to the financial qualifications of the Respondent in accordance with this RFQ. Accordingly, to strengthen the Respondent's financial qualifications, Respondents may submit the qualifications of a Guarantor that will absolutely and unconditionally guarantee the performance and payment obligations of the Design-Builder under the DB Agreement. A Respondent that is a limited liability company, a special purpose entity or a subsidiary formed for the purpose of responding to this RFQ shall be required to propose a Guarantor.

Respondents proposing a Guarantor shall clearly identify the Guarantor in the SOQ and shall include a Guarantor Acknowledgement (in the form set forth in Attachment A) signed by a representative of the Guarantor who is authorized to sign such material and to commit the Guarantor to the obligations contained in the Guarantor Acknowledgement. A Certificate of Authorization (Attachment B) attesting to such authorization must also be submitted. If the Guarantor is a partnership, the Guarantor Acknowledgement shall be signed by one or more of the general partners. If the Guarantor is a corporation, an authorized officer shall sign his or her name, and indicate his or her title beneath the full corporate name. If the Guarantor is a joint venture, an authorized representative of each firm in the joint venture shall sign a separate Guarantor Acknowledgement. Anyone signing as an agent must file with it legal evidence of his or her authority to execute such Guarantor Acknowledgement. The Guarantor will be required to sign the Guaranty Agreement, the form of which will be included in the RFP In stage II of this procurement.

The City in its sole discretion will reject any Respondent that does not possess the financial strength and capacity to undertake this project and the obligations and liabilities thereof. Subject to the complete review and finding of acceptability of the submitted financial information, Respondents demonstrating an ability to provide 100% performance and payment bonds and the ability to maintain a minimum net worth of \$200 million, as measured by either the Respondent or a proposed Guarantor, shall be deemed to have the financial strength and capacity to undertake the project.

G. Title VI Solicitation Notice

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

H. Transparency Website; Trade Secrets

Consistent with the City's practice of making available all information submitted in response to a public procurement, all Statements of Qualifications (SOQ's), any information and documentation contained therein, any additional information or documentation submitted to the City as part of this solicitation, and any information or documentation presented to City as part of negotiation of a contract or other agreement may be made publicly available through the City's Internet website. However, Respondents may designate those portions of a SOQ which contain trade secrets or other proprietary data ("Data") which Respondent desires remain confidential.

To designate portions of a SOQ as confidential, Respondent must:

- A. Mark the cover page as follows: "This SOQ includes trade secrets or other proprietary data."
- B. Mark each sheet or Data to be restricted with the following legend:
- C. "Confidential: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this SOQ."
- D. Provide a CD-ROM with a redacted copy of the entire SOQ or submission in .pdf format for posting on the City's website. Respondent is responsible for properly and adequately redacting any Data which Respondent desires remain confidential. If entire pages or sections are removed, they must be represented by a page indicating that the page or section has been redacted. Failure to provide a CD-ROM with a redacted copy may result in the posting of an un-redacted copy.
- E. Provide a written explanation of the basis under which each redacted item has been deemed confidential, making reference to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).
- F. All SOQs submitted to the City in response to this RFQ are subject to the Illinois Freedom of Information Act. The City will make the final determination as to whether the information will be disclosed pursuant to a request under the Freedom of Information Act or valid subpoena. Respondent agrees not to pursue any cause of action against the City with regard to disclosure of this information.
- G. Consistent with the City's practice of making available all information submitted in response to a public procurement all Statement of Qualifications, any information and documentation contained therein, any additional information or documentation submitted to the City as part of this RFQ, and any information or documentation presented to City as part of the negotiation of an Agreement will be made publicly available through a website hosted by the City. Data will only remain confidential if Respondent has marked the documents containing such data in the manner required by this Section.

II. REQUIRED INFORMATION

Each Statement of Qualifications must contain all of the following documents and must conform to the following requirements.

A. Format

Hard copies of the Statement of Qualifications responding to this RFQ should be prepared using a font no smaller than 12 point on 8 ½" X 11" letter size paper (preferably recycled), printed double-sided and bound on the long side. The City encourages using reusable, recycled, recyclable and chlorine-free printed materials for Proposal, reports, and all other documents prepared in connection with this RFQ. Expensive papers and bindings are discouraged as no materials will be returned. One page equals one side of content (e.g. printing on both sides of an 8-1/2" x 11" piece of paper equals two pages).

Proposals must be submitted in two separately-bound volumes. The first volume must contain the Respondent's Statement of Qualifications and must be labeled "*Volume I, Statement of Qualifications*"; and the second volume must contain representations and certifications as described herein and must be labeled "*Volume II, Representations and Certifications*".

Each separate volume and individual sections should be clearly identified and separated by labeled tabs and organized in accordance with subject matter sequence as set forth below. Each page must be identified by volume number and page number.

The electronic version of the Statement of Qualifications must, to the extent practicable, mimic the structure required for the hard copies (Original and Copies).

B. Volume I – Statement of Qualifications – Required Content

Respondents are advised to adhere to the submittal requirements of this RFQ. Failure to comply with the instructions of this RFQ, including but not limited to the page limitations set forth below, may be cause for rejection of the non-compliant submittal. Submission of qualifications constitutes the Respondent's acceptance of all requirements outlined in the RFQ. By submitting a response to this RFQ, Respondent acknowledges that if its Qualifications are accepted by the City, its Qualifications and related submittals may become part of the Agreement.

The qualifications must include the following information:

1. Cover Letter – limit of three (3) pages

Respondent must submit a cover letter, signed by an authorized Respondent representative, committing Respondent to providing the Services in accordance with its Qualifications and the terms and conditions of any Agreement which may be awarded pursuant to this RFQ.

2. Executive Summary – limit of three (3) pages

Respondent must provide an executive summary which addresses the following information:

- a. Outline the number of years Respondent has been in business and identify Respondent's legal name, its headquarters address, its principal place of business, its legal form (i.e., corporation, joint venture, partnership, etc.), the names of its principals or partners, and whether Respondent is authorized to do business in the State of Illinois. If Respondent is a business entity comprised of more than one (1) legal entity, Respondent must identify all legal entities so comprising Respondent; it must identify each entity's respective ownership percentage of Respondent; and Respondent must summarize the role, degree of involvement and experience of each such separate entity;
- b. Indicate the name, mailing address, email address, and telephone number(s) of the principal contact for oral presentation or negotiations;
- c. Explain its understanding of the City's intent and objectives and its approach to achieving those objectives;
- d. Provide a brief summary of the qualifications, experience and background of the team and its committed Key Personnel (as herein defined);
- e. Summarize Respondent's commitment to comply with the MBE/WBE requirements as stated in the Special Conditions Regarding Disadvantaged Business Enterprise Commitment and Schedules, attached as Exhibit F to the Sample Professional Services Agreement contained in Part II of this RFQ;
- f. Respondents must review the attached Sample Form of Agreement. Respondents are advised that the City may, from time to time, revise this Agreement. A final version of this Agreement will be included with the Request for Proposals (RFP) as defined in this RFQ. The City invites any comments to this Agreement which may be helpful in finalizing the Agreement which reflects the City's and the Construction Industry's interest. Respondents invited to submit proposals (Step 2 of the Selection Process) will be allowed to identify any exceptions or objections it/they has/have to the City's final sample Agreement for Design-Build Services ("Agreement"). After the receipt of Proposals, pursuant to the RFP process (Step 2), the City will not accept or entertain any exceptions or objections to the Agreement except and only to the extent the City subsequently makes a material change to a substantive provision of the Agreement.

3. Company Profile – limit of two (2) pages (not including any attachments required by the provisions below)

Respondents must briefly describe their legal structure and the way in which their business is organized.

If Respondent is a joint venture, a copy of the joint venture agreement signed by an authorized officer of each joint venture partner must be attached. Each member of the joint venture must execute a separate On-Line EDS.

If Respondent is a limited liability company, a copy of the operating agreement signed by an authorized member or manager of the limited liability company must be attached.

Note that the EDS Certificate of Filing forms should be placed in Volume II of the Statement of Qualifications.

4. Project Experience – limit of eight (8) pages total

Provide a Key Project Information Form (copy attached) and a narrative of not more than eight (8) pages total for the comparable and relevant projects completed by team members (complete or at least 50% complete based on earned value) within the last ten (10) years. Key Project Information Form sheets can be included in a separate appendix and will not count toward the 8-page limit. Key Project Information Forms shall include project owner name, location and contact information as well as pertinent details relevant to this project.

The proposed Design-Builder entity, including Lead Builder(s) and Lead Designer(s), any of which also may serve as the Design-Builder entity, shall be identified in the Respondent's Statement of Qualifications (SOQ) submittal. Respondent shall also identify all specialty subcontractors and design consultants who are part of their team. Experience and qualifications information must be included in the RFQ.

1) Qualifications and Experience for Lead Constructor, Lead Designer, Subcontractors and Design Consultants.

a. Minimum Project Experience and Past Performance: Proposed Design-Builder shall demonstrate its project team experience by presenting the qualifications and capabilities of each Design-Build Team member firm, for projects completed within the last ten (10) years, including projects that may be at least 50% complete prior to the required submittal date of this RFQ Step One solicitation, that demonstrate related minimum project experience as indicated below:

b. Lead Constructor or Tunnel Subcontractor:

- i. The entity performing the tunnel boring work must have constructed at least two (2) soft ground tunneling projects that involved the use of a pressurized closed-face TBM (EPB or slurry) and include the following elements:
 - Minimum tunnel length of 2,500 linear feet in length
 - Minimum tunnel internal diameter of 12 feet

- Concrete segmental liner used for permanent support
- ii. The Lead Constructor must have been involved on at least two aviation projects that involved airside work with similar levels of security and safety, high levels of ongoing operations, similar trades, complexity and magnitude.
- c. Lead Design Firm or Tunnel Design Subconsultant:
 - i. The entity who will design the tunnel must have designed at least two (2) soft ground tunneling projects that include the use of concrete segmental liners for permanent support and include the following elements:
 - Minimum tunnel length of 2,500 linear feet in length
 - Tunnel was bored using a pressurized closed-face TBM (EPB or slurry)
 - Tunnel must be over 12 feet in diameter
- d. Lead Constructor or Geotechnical Specialty Subcontractor
 - i. The entity who will perform the specialty geotechnical construction must have constructed the following construction elements as part of a larger project:
 - Minimum 2 projects that included a bentonite slurry cut-off wall of at least 40 feet in depth
 - Minimum 2 projects that included a bedrock grouting program to reduce groundwater inflows
- e. Additional Preferred Project Experience and Past Performance: Design-Builder teams shall receive higher qualifications scores from the Evaluation Committee (EC) if their submitted project experience and past performance can demonstrate the following:
 - i. Listed projects are of a similar or greater size and level of complexity.
 - ii. Any listed projects of the proposed Design-Builder entity were designed and constructed through design-build project delivery.
 - iii. The Tunnel Subcontractor has driven a similar tunnel or performed trenchless work on airport property (airside).
 - iv. The Tunnel Contractor successfully drove a soft ground tunnel using a pressurized closed-face TBM passing under critical infrastructure with less than two diameters of soil cover.
 - v. The Lead Constructor and Lead Designer have worked together on previous projects, especially on design-build projects.

- vi. Listed projects of the Lead Constructor and Lead Designer for the tunneling work include experience in reasonably similar geotechnical conditions.
- vii. Listed projects demonstrate capabilities and experience of utilizing soil stabilization and underpinning techniques for settlement control when tunneling under critical infrastructure and/or structures with less than one diameter of soil cover. (This may be a Specialty Subcontractor)
- viii. Key Personnel, most significantly the proposed Project Manager, Design Manager and Construction Manager, have served on the Projects listed and their client reference can validate that performance.

5. Expertise and Experience of Key Staff – limit of eight (8) pages total

Provide a narrative and resumes demonstrating relevant expertise and experience of key staff. Resumes should be no longer than two (2) pages each and should indicate whether proposed personnel are currently employed by Respondent. Resumes can be included in a separate appendix and will not count toward the page limit. Experience should highlight the proposed Key Staff's recent experience in comparable roles and role in the comparable projects cited in firm experience section of proposal. Reference information (names, organization, and phone numbers) for Key Staff's recent comparable experience is highly desirable. Pages must be identified by volume number and page number.

Respondent must include resumes and project experience of Respondent's staff ("Key Staff Members") reflecting the following minimum qualifications:

- a. Minimum Fifteen (15) years total industry experience of which five (5) years is in a similarly responsible position for each of the following Key Personnel:
 - Design-Build Project Manager
 - Design Manager
 - Lead Tunnel Designer
 - Lead Geotechnical Designer
 - Lead Constructor — Construction Manager
 - Tunneling Superintendent
- b. Minimum ten (10) years total industry experience of which three (3) years is in a similarly responsible position for each of the following key personnel:
 - Superintendent Permitting/Compliance Manager
 - Design-Builder Quality Assurance/Quality Control (QA/QC)
 - Design—Builder Safety Manager
 - Lead TBM Operator

- c. Key Personnel must demonstrate experience with the type work to be performed.
- d. Proposers shall identify, in their Statement of Qualifications (SOQ), those State of Illinois registered Professional Engineers who will sign and seal construction plans and specifications.
- e. Key Personnel resumes shall indicate the individual's current firm association, their professional qualifications, a client reference with contact information, and their role and duration on each project for which they are being credited the related experience.
- f. Additional Preferred Experience and Past Performance:
 - Experience in a significant role on a design-build project, especially in a similar role as proposed for this Project, and;
 - Superior references with regard to meeting cost, schedule, and quality objectives on previous projects, and maintaining a positive client relationship.

Additionally, Respondent must submit organization chart of Respondent's proposed organization indicating Key Staff Members' potential roles and responsibilities on the Project at each project phase. The organization chart may be printed on 11"x17" paper, but it must be folded to fit within the confines of the respective volume and will count as one page.

Respondents are advised that all Key Personnel and DB Team Members identified in a Respondent's SOQ shall remain on the Respondent's DB Team for the duration of the procurement process and, if the Shortlisted Respondent is awarded a Contract, the duration of the Contract. If extraordinary circumstances require a proposed change, it must be submitted in writing to the City's point of contact, who, at his sole discretion, will determine whether to authorize a change. Unauthorized changes to the Respondent's DB Team at any time during the procurement process may result in elimination of the Respondent, Shortlisted Respondent, or Design-Builder, as applicable, from further consideration.

6. Design-Builder Safety Record – Past Performance – limit of three (3) pages total

Minimum past performance as reflected by a three (3) year average for the last three (3) previous full years of the Experience Modification Rate (EMR) for the Design-Builder, Tunnel Subcontractor, and Geotechnical Specialty Subcontractor, and shall not exceed 1.10 for each firm.

Design-Builders shall provide EMR data for the previous three (3) full calendar years (2015, 2016, and 2017) on a firm-wide basis which shall be documented by a signed letter with contact information from the firm's insurance carrier, or the insurance

carrier's agency representative. Higher qualifications score shall be provided by the EC for a Design-Builder demonstrating an average EMR lower than other competing Design-Builder firms. Design-builder shall also provide their OSHA forms 300 and 300A for the last three (3) full calendar years indicating OSHA submitted accident data for evaluation by the EC as to their frequency and severity.

Further, Design-Builders shall provide the Safety Program's Table of Contents (TOC) and a copy of the Firm's NCCI current experience modification rating (EMR) worksheet and shall complete the Safety Questionnaire included in this RFQ.

7. Minority Business Enterprise (MBE) and Women Owned Business Enterprise (WBE) Participation— limit of three (3) pages total

Respondent must describe its plan for obtaining meaningful participation by MBE and WBE firms. **The MBE participation goal is 26% and the WBE Participation goal is 6% of the total contract value.** Consistent with the City's practice of encouraging and facilitating the participation of MBE's and WBE's in prime contractor roles on City projects, the City urges Respondents to partner with MBE/WBE firms at the prime contractor level. The City encourages MBE/WBE participation on a Respondent's team to include well-defined management roles and responsibilities for the MBE/WBE team members. In the case of a Joint Venture, it must allocate to the MBE/WBE financial risk commensurate with the financial rewards available to be achieved by a successful Respondent.

Further Respondent must address the following:

- a. Describe the commitments made by Respondent (if any) and percentages of actual MBE and WBE participation achieved on each of the three projects submitted as representative of Respondent's Design-Build Experience.
- b. Describe the commitments made by Respondent (if any) and percentages of actual MBE and WBE participation achieved on the three (3) projects submitted as representative experience.
- c. Describe Respondent's proposed plan to achieve MBE/WBE participation on the Project, specifically address both the Pre-Construction and Construction phases of the Project.
- d. Describe in detail the Respondent's bidding and procurement strategies and plan to achieve its Construction- phase MBE and WBE commitments.

8. References

Provide references for all projects cited as project experience for Design-Build and Tunneling construction. Provide references for all current clients or projects completed in the past ten (10) years.

9. Quality – limit of two (2) pages total

Describe the Respondent's approach to Quality Management, specifically to this project. Provide the Table of Contents (TOC) of one of the firm's recent Quality

Control Programs. Respondent may elect to include a full copy of a sample Quality Control Program in Volume II of the response. The City reserves the right to request a complete copy of a sample Quality Control Program.

C. Volume II – Representations and Certifications – Required Content

1. Conflict of Interests

If applicable, Respondent must provide a statement and information regarding conflicts of interest required pursuant to Section I.G.

2. Respondent's Corporate History

Respondent must provide a chronological history of all mergers and/or acquisitions (if any) involving the Respondent and each legal entity comprising Respondent, including all present and former subsidiaries or divisions and any material restructuring activities, if applicable. Include any such forthcoming actions, if such disclosure has already been made generally available to the public and is permitted by law.

3. Legal Actions

Respondent, or each separate legal entity comprising Respondent, if applicable, must provide a listing and a brief description of all material legal actions, together with any fines and penalties, for the past five (5) years in which (a) Respondent, any division, subsidiary or parent company of Respondent, or each separate legal entity comprising Respondent, or (b) any member or partner of Respondent, if Respondent is a business entity other than a corporation, has been:

- a) a debtor in bankruptcy;
- b) a defendant in a legal action for deficient performance under a contract, in violation of a statute or related to service reliability;
- c) a respondent in an administrative action for deficient performance on a project, in violation of a statute or related to service reliability;
- d) a defendant in any criminal action;
- e) a named insured of an insurance policy for which the insurer has paid a claim related to deficient performance under a contract, in violation of a statute or related to service reliability;
- f) a principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to deficient performance under a contract, in violation of a statute or related to service reliability; or
- g) a defendant or respondent in a governmental inquiry or action regarding the accuracy of prepared financial statements or disclosure documents.

4. Financial Statements

Respondent, or each separate legal entity comprising Respondent, if applicable, must provide a copy of its **most recent audited financial statements for the past three (3) years**. The City reserves the right to accept or reject any financial

documentation other than the audited financial statements.

5. Economic Disclosure Statement and Affidavit ("EDS")

Respondent, or each separate legal entity comprising Respondent, if applicable, must submit an on-line completed and executed EDS (see Section VII of this RFQ). If the Respondent is a business entity other than a corporation, then each member or partner of the Respondent must complete an on-line EDS. In addition, any entity that has an interest in the Respondent or in one or more of its members or partners and is required pursuant to the Municipal Purchasing Act for Cities of 500,000 or More Population (65 ILCS 5/8-10-8.5) ("**Municipal Purchasing Act**") or Chapter 2-154 of the Municipal Code of Chicago to provide a disclosure must submit a completed and executed EDS as an "entity holding an interest in an Applicant" as described in the EDS. All affidavits must be notarized. Provide an ownership organizational chart showing the relationship between the various entities disclosed in the EDS forms. The ownership organizational chart may be printed on 11"x17" paper, but it must be folded to fit within the confines of the respective volume.

Subcontractors do not have to submit an EDS at the time of submitting a Proposal but may be required to do so by the City at a later date.

6. MBE/WBE Documentation

Respondents must submit a letter addressing an approach and good faith efforts towards meeting the goals of 26% MBE and 6% WBE participation. If the Respondent is joint venturing with a MBE/WBE firm, then the Respondent must submit a fully executed Schedule B and a copy of the joint-venture agreement. The actual compliance plan (Schedule Cs and D) will be submitted to CDA when the successful vendor(s) submits a total cost proposal for the project(s) that will be managed by that firm. The Schedule Cs and Schedule D are **NOT** required with the Statement of Qualifications.

Respondents must comply with the Special Conditions Regarding Minority Owned Business Enterprise Commitment and Women Owned Business Enterprise Commitment. Failure to comply with this requirement may result in disqualification from this RFQ process.

7. Insurance

Respondents are **NOT** required to submit evidence of insurance with the Proposal but must submit evidence of insurability indicating that if awarded an Agreement the Respondent will provide evidence of insurance in the amounts specified in **Exhibit E** to the Agreement. Prior to award of an Agreement, the Respondent selected to perform the Services must submit evidence of insurance in the amounts specified and in the form provided in Exhibit E to the Agreement. If Respondent is a joint venture or limited liability company the evidence of insurability and evidence of insurance, if awarded an Agreement, must be in the name of the joint venture or

limited liability company.

8. Security for Performance

The successful respondent shall be responsible for securing a performance and payment bond in the amount of 100% of the Design-Build Price to secure the payment and performance obligations associated with the Work. Evidence of the ability of the Respondent to meet these security requirements must be included in the SOQ in the form of a letter from the Respondent's surety or sureties. The surety must be authorized by law to do business in the State of Illinois pursuant to a current certificate of authority to transact surety. The surety or sureties must also have an A.M. Best Company Rating of A minus and VIII or better.

III. EVALUATION OF PROPOSALS

A. Evaluation Committee and Short-listing Process

An Evaluation Committee ("EC"), which may include representatives of the Chicago Department of Aviation and other City departments, will review and evaluate the Qualifications. The City reserves the right to enlist independent consultants to assist with the evaluation of all or any portion of the submittals, as it deems necessary. The EC will first assess the Respondent's compliance with and adherence to all Volume I and Volume II of the submittal requirements. Any incomplete submittal with missing key components necessary to fully evaluate the response may, at the discretion of the CPO, be rejected from further consideration due to "non-responsiveness" and rated Non-Responsive.

For the purposes of Step 1, as defined in this RFQ, the EC will evaluate the extent to which a Response meets the requirements set forth in the RFQ, including but not limited to a detailed analysis of Volumes I and II of the Response. The focus of the evaluations will be on the Respondent's qualifications, experience, key personnel qualifications and experience, safety record, M/WBE participation and workforce development and other factors based on the evaluation criteria outlined in this section. The EC may also review any other information that is available to it, including but not limited to information gained by checking references and by investigating the Respondent's financial condition.

The City reserves the right to seek clarification of any information that is submitted by any Respondent in any portion of its submittal or to request additional information at any time during the evaluation process. Any material misrepresentation made by a Respondent may void the Response and eliminate the Respondent from further consideration.

After the EC completes its review of Proposals, it may submit to the Commissioner of the Chicago Department of Aviation (the "**Commissioner**") a recommended short list of no fewer than three (3) Respondents for further consideration.

The City reserves the right after the advertisement of the RFQ to refine the Scope of Services, with appropriate notice. Further, if upon receipt of Qualifications, if the City

wishes to make refinements to the Scope of Services, it may, depending on circumstances provide the refinements to all Respondents and invite Qualifications from all Respondents based upon revised scope of services.

B. Evaluation Criteria

The City will review the Respondent's Proposal using the following criteria:

Criteria		Points
1A	Design-Builder Team Project Experience and Past Performance	45
2A	Design-Builder Team Key Personnel Experience and Qualifications	40
3A	Safety Record - Past Performance	10
4A	M/WBE Participation and Workforce Development	5
TOTAL MAXIMUM POINTS		100

Criteria 1A point value will be applied based on the applicability of the Design-Builder team demonstrated project experience and past performance with regard to type, size, geologic conditions, environmental constraints, and construction methods. Additional preferred experience includes design-build experience and performing similar work at an operating airport.

Criteria 2A point value will be applied based on the level of qualifications and experience of key personnel specifically with respect to their experience with projects of similar scope, complexity, and magnitude, and their roles on previous projects versus their proposed roles for this project.

Criteria 3A point value will be applied based on minimum past experience as reflected by a three (3) year average for the last three (3) previous full years of the Experience Modification Rate (EMR) for the Design-Builder, Tunnel Subcontractor, and Geotechnical Specialty Subcontractor shall not exceed 1.10 for each firm. A higher score will be awarded to a Design-Builder demonstrating an average EMR lower than other competing Design-Builder firms.

Criteria 4A point value will be applied based on the adequacy and comprehensiveness of Respondent's MBE/WBE plan, taking into consideration, among other things, Respondent's understanding of the MBE/WBE Special Conditions and verifiable past performance achieving substantial MBE/WBE participation on comparable projects.

In the event that the City receives fewer than three proposals, or fewer than three Design-Builders are determined to be responsive and responsible to perform the required services, the City may proceed with the number of proposal(s) received which are determined to be responsive and responsible, provided that the City has conducted an analysis of market availability for subject services and determined in its sole discretion that there is no further market availability or immediate interest to provide subject services. Furthermore, in the event that the City receives fewer than three proposals, the City in its sole discretion may extend the Step 1 Submittal Deadline, provided that proposal(s) have not been opened.

Only those Advancing Firms will be eligible to offer a responsive and responsible technical and price proposal in the Step 2- Evaluation of Technical and Price Proposal process.

IV. ADDITIONAL DETAILS OF THE RFQ PROCESS

A. Addenda

If it becomes necessary to revise or expand upon any part of this RFQ, an addendum will be sent to all of the prospective Respondents listed on the "Specification Take-Out-Sheet" prior to the Response due date. Prospective Respondents are automatically included on the Specification Take-Out Sheet when they sign for a copy of the RFQ package in the Bid and Bond Room, request that the Bid and Bond Room personnel mail them a copy, or download the RFQ document per the instructions and requirements in Section I.B.3. Each addendum is incorporated as part of the RFQ documents, and receipt must be acknowledged by the prospective Respondents in the Cover Letter of their Qualifications or as otherwise directed herein.

The addendum may include, but will not be limited to, the following:

- A change of the Response due date;
- Clarifications to Respondents questions; and
- Terms and conditions the City anticipates will be included in the final signed contract.

B. City's Rights to Reject Qualifications

The City is under no obligation to award an Agreement pursuant to this RFQ and, acting through the CPO, reserves the right to reject any and all Qualifications. The City reserves the right to use any other procurement method available under applicable law to obtain the Services described herein.

C. No Liability for Costs

The City is not responsible for any costs or damages incurred by Respondents, their team member(s), subcontractors, or other interested parties in connection with the RFQ process, including but not limited to costs associated with preparing the Statement of Qualifications, proposals, and/or participation in any conferences, oral presentations, or negotiations.

D. Debriefing

If any Respondent requests a debriefing in writing, it may be granted at the discretion of the CPO only after the award of the Contract. **No EC member will individually debrief a Respondent at any time.**

V. SAFETY QUESTIONNAIRE

The City is committed to working with safe design-builders. To that end, the City has developed a safety questionnaire to aid in selection of design-builders with good safety records. As a part of the design-builder submittal process you must answer the questions below.

1. Does your organization have a safety program? Yes ☐ No ☐

If yes, provide the following information:

Month and Year first implemented _____

Method of review of program _____

Whether regular work site safety meetings are held and how frequently _____

Copy of table of contents of safety/loss control manual (attach to Safety Questionnaire)

2. Have any OSHA or other citations been issued to your organization during the period of the last three (3) years for workplace safety law violation. Yes ☐ No ☐

If yes, provide detailed information on separate page(s) for each occurrence regarding:

- a. The nature of the violation for which your organization was cited;
- b. Summary of your position of the matter; and
- c. Official resolution of violation.

3. Provide your organization's OSHA reportable incident rate: _____. If this is greater than 3.0, please attach your OSHA Form 300A Summaries for the last three years and a written explanation to the qualification questionnaire (attach as necessary).
4. Provide a copy of your organization's NCCI current experience modification (EMR) rating worksheet. If the rating is greater than 1.0 please attach the NCCI rating information for the last 3 years and a written explanation to the qualification questionnaire. As a follow up, you may be asked to provide your written safety plan.

VI. LEGAL ACTIONS

Please provide the information below. If the answer to any of the questions is "Yes", provide a brief description or explanation on a separate sheet.

Question	Yes	No
1. Has the firm or venture been issued a notice of default on any contract awarded in the last three years?		
2. Does the firm or venture have any judgments, claims (liquidated damages or other), arbitration proceedings or suits pending or outstanding against the firm or venture or its officers? If yes, include the dollar amount of claims or judgments and the contract value of the contract on which the claim was filed.		
3. Within the past three years, has the firm or venture been a party to any lawsuits or arbitration proceedings with regard to any contracts?		
4. Within the last three years, has any officer or principal of the firm or venture ever been an officer or principal of another organization that failed to complete any contract as a result of termination, litigation, arbitration or similar matter?		
5. Has any key person with the firm or venture or its predecessor ever been convicted of or charged with any state or federal crime (excluding traffic violations), including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, criminal anti-trust violations, bid rigging or bid-rotating?		
6. Has the firm or venture ever been temporarily or permanently debarred from a contract awarded by any federal, state, or local agency?		
7. Within the last three years, has the firm or venture been assessed penalties for any statutory or administrative violations, including MBE, WBE, MBE/WBE and/or EEO?		
8. Has the firm or venture ever failed to complete any work awarded to it?		

VII. ECONOMIC DISCLOSURE STATEMENT ("EDS") AND AFFIDAVIT AND APPENDIX A EDS ON-LINE INSTRUCTIONS

INSTRUCTIONS FOR COMPLETING ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT (EDS) ON-LINE

The Respondent shall complete an online EDS prior to the Response due date. At the discretion of the CDA, a Respondent who does not file an electronic EDS prior to the Response due date, may be found non-responsive and its Response rejected.

If you are unable to complete the online EDS and print a Certificate of Filing prior to the Response due date, the City will accept a paper EDS provided written justification is provided explaining the Respondent's good faith efforts to complete it before the Response due date and the reasons why it could not be completed.

1.1. ONLINE EDS FILING REQUIRED PRIOR TO BID OPENING

The Respondent must complete an online EDS prior to the bid opening date.

A Respondent that does not file an electronic EDS prior to the Response due date will be found non-responsive and its Response will be rejected unless a paper EDS and written justification is submitted with the Response as explained in the above paragraph).

1.2. ONLINE EDS WEB LINK

The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>.

1.3. ONLINE EDS NUMBER

Upon completion of the online EDS submission process, the Respondent will be provided an EDS number. Respondent should provide this number here:

EDS Number: _____

1.4. ONLINE EDS CERTIFICATION OF FILING

Upon completion of the online submission process, the Respondent will be able to print a hard copy Certificate of Filing. The Respondent should submit the signed Certificate of Filing with its bid. Please insert your Certification of Filing following this page.

A Respondent that does not include a signed Certificate of Filing with its bid must provide it upon the request of the Chief Procurement Officer.

Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will

also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

1.5. PREPARATION CHECKLIST FOR REGISTRATION

To expedite and ease your registration process, we recommend that you collect the following information prior to registering for an Online EDS user account:

	1. Invitation number, if you were provided an invitation number.
	2. EDS document from previous years, if available.
	3. Email address to correspond with the Online EDS system.
	4. Company Information:
	a. Legal Name
	b. FEIN/SSN
	c. City of Chicago Vendor Number, if available.
	d. Address and phone number information that you would like to appear on your EDS documents.
	e. EDS Captain. Check for an EDS Captain in your company - this maybe the person that usually submits EDS for your company, or the first person that registers for your company.

1.6. PREPARATION CHECKLIST FOR EDS SUBMISSION

To expedite and ease your EDS submission, we recommend that you collect the following information prior to updating your EDS information online.

Items #1 through #7 are needed for both EDS information updates and contract related EDS documents:

- _____ 1. Invitation number, if you were provided with an invitation number.
- _____ 2. Site address that is specific to this EDS.
- _____ 3. Contact that is responsible for this EDS.
- _____ 4. EDS document from previous years, if available.
- _____ 5. Ownership structure, and if applicable, owners' company information:
 - _____ a. % of ownership
 - _____ b. Legal Name

- _____ c. FEIN/SSN
- _____ d. City of Chicago Vendor Number, if available.
- _____ e. Address
- _____ 6. List of directors, officers, titleholders, etc. (if applicable).
- _____ 7. For partnerships/LLC/LLP/Joint ventures, etc.:
 - _____ a. List of controlling parties (if applicable).

Items #8 and #9 are needed ONLY for contract related EDS documents:

- _____ 8. Contract related information (if applicable):
 - _____ a. City of Chicago contract package
 - _____ b. Cover page of City of Chicago bid/solicitation package
 - _____ c. If EDS is related to a mod, then cover page of your current contract with the City.
- _____ 9. List of subcontractors and retained parties:
 - _____ a. Name
 - _____ b. Address
 - _____ c. Fees – Estimated or paid

1.7. EDS FREQUENTLY ASKED QUESTIONS

Q: Where do I file?

A: The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

Q: How do I get help?

A: If there is a question mark on a page or next to a field, click on the question mark for help filling out the page or field. You may also consult the User Manual and the Training Videos available on the left menu.

Q: Why do I have to submit an EDS?

A: The Economic Disclosure Statement (EDS) is required of applicants making an application to the City for action requiring City Council, City department or other City agency approval. For example, all bidders seeking a City contract are required to submit an EDS. Through the EDS, applicants make disclosures required by State law and City ordinances and certify compliance with various laws and ordinances. An EDS is also required of certain parties related to the applicant, such as owners and controlling parties.

Q: Who is the Applicant?

A: "Applicant" means any entity or person making an application to the City for action requiring City Council or other City agency approval. The applicant does not include owners and parent companies.

Q: Who is the Disclosing Party?

A: "Disclosing Party" means any entity or person submitting an EDS. This includes owners and parent companies

Q: What is an entity or legal entity?

A: "Entity" or "Legal Entity" means a legal entity (for example, a corporation, partnership, joint venture, limited liability company or trust).

Q: What is a person for purposes of the EDS?

A: "Person" means a human being.

Q: Who must submit an EDS?

A. An EDS must be submitted in any of the following three circumstances:

Applicants:	An Applicant must always file this EDS. If the Applicant is a legal entity, state the full name of that legal entity. If the Applicant is a person acting on his/her own behalf, state his/her name.
Entities holding an interest:	Whenever a legal entity has a beneficial interest (E. G. direct or indirect ownership) of more than 7.5% in the Applicant, each such legal entity must file an EDS on its own behalf.
Controlling entities:	Whenever a Disclosing Party is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture that has a general partner, managing member, manager or other entity that can control the day-to-day management of the Disclosing Party, that entity must also file an EDS on its own behalf. Each entity with a beneficial interest of more than 7.5% in the controlling entity must also file an EDS on its own behalf.

Q: What information is needed to submit an EDS?

A: The information contained in the Preparation Checklist for EDS submission.

Q: I don't have a user ID & password. Can I still submit an Online EDS?

A: No. You must register and create a user ID and password before submitting an Online EDS

Q: What information is needed to request a user ID & password for Online EDS?

A: The information contained in the Preparation Checklist for Registration is needed to request a login for the Online EDS.

Q: I already have a username and password from another City web site (City Web Portal, Department of Construction and Permits, Department of Consumer Services, etc.). Can I log-in the Online EDS with that account?

A: Usually not. The Online EDS uses a user ID and password system that is shared by the Public Vehicle Advertising and Water Payment web sites. You may use a username and password from those sites by answering "Yes" to "Is this an existing City of Chicago user ID?" when registering. Other usernames and passwords will not be automatically recognized. However, you may choose to create an identical username for the Online EDS if it is not already taken.

Q: I don't have an email address. How do I submit an Online EDS?

A: You cannot get an account to submit an online EDS without an email address. If you need an e-mail address, we suggest that you use a free internet email provider such as www.hotmail.com or www.yahoo.com or rmail.google.com to open an account. The City does not endorse any particular free internet email provider. Public computers are available at all Chicago Public Library branches.

Q: I forgot my user ID. Can I register again?

A: No. If you are the EDS Captain of your organization, please contact the Department of Procurement Services at 312-744-4900. If you are an EDS team member, contact your EDS Captain, who can look up your user ID.

Q: Who is the EDS Captain?

A: The EDS Captain is a person who performs certain administrative functions for an organization which files an EDS. Each organization registered with the Online EDS has at least one EDS Captain. There may be co-captains, who are all equal. EDS Captains approve new users, change contact information for an organization, and de-active accounts of employees who have left the organization. Please see the User Manual for more information.

Q: Why do we need EDS Captains?

A: The Online EDS is designed to be a self-service web application which allows those doing or seeking to do business with the City to perform as many routine functions as possible without City intervention. Because many organizations have multiple staff filing an EDS, the EDS Captain role allows those organizations to self-manage the contact information and users.

Q: Who is the EDS team?

A: The EDS team for an organization is everyone who is registered to file an EDS on behalf of the organization.

Q: I forgot my password. What should I do?

A: To retrieve a temporary password, click the "Forgot your password?" link on the login page. Enter your user ID that you provided when you registered your account. The system will automatically generate a temporary password and send it to you. When you log-in with your temporary password, you will be asked to create a new password.

Q: How do I complete an Online EDS?

A: Click on "Create New" after logging in. The Online EDS system will walk you through the EDS questions. Please see the User Manual for details.

Q: How do I fill out a Disclosure of Retained Parties?

A: There is no longer a separate Disclosure of Retained Parties filing. After logging in, click on "Create New". Answer (click) "Contract" to "Is this EDS for a contract or an EDS information update?" Click "Fill out EDS", and click on the "Retained Parties" tab. When finished, click on "Ready to Submit."

Q: How do I attach documents?

A: Attachments are discouraged. If at all possible, please provide a concise explanation in the space provided in the online form. Attachments with pages of officers are not acceptable. Names of officers must be typed into the system. If you must provide an attachment for another reason, please send it to your City of Chicago contact (contract administrator or negotiator for procurements) and they will attach it for you. Documents can be sent in PDF (preferred), Word, or paper format.

Q: Who can complete an Economic Disclosure Statement online?

A: Any authorized representative of your business with a user ID and password can complete your EDS online. One person, such as an assistant, can fill in the information and save it, and another person can review and electronically sign the Online EDS.

Q: What are the benefits of filing my Economic Disclosure statement electronically?

A: Filing electronically reduces the chance of filing an incomplete EDS and speeds up the processing of contract awards. A certificate of filing can be printed at the completion of the process and inserted into your bid package. The biggest benefit for those who frequently do business with the City is that after the first EDS, each EDS is much easier to fill out because non-contract specific information is pre-filled from the last submitted EDS.

Q: Will my information be secure?

A: Yes. When making your internet connection to our Web Server, you will connect through a Secure Socket Layer (SSL for short) to the "Online EDS" login page. All information you type will be protected using strong encryption. Within the login page, you will provide us with a user ID, password, and secret question for user authentication, only you will have knowledge of this unique identification information.

Q: I am filing electronically. How do I sign my EDS?

A: Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

Q: My address has changed. How can I update my information?

A: You must be an EDS Captain for your organization to update this. Log-in and click on "Vendor Admin, Site Administration." Select the appropriate site and click edit.

Q: I have more questions. How can I contact the Department of Procurement Services?

A: Please contact the contract administrator or negotiator assigned to your solicitation or contract. You may call DPS at 312-744-4900 between 8:30 AM and 5:00 PM Central Time.

Q: Can I save a partially complete EDS?

A: Yes. Click "Save". To avoid data loss, we recommend you save your work periodically while filling out your EDS.

Q: Do I have to re-type my information each time I submit an EDS?

A: No. The system will remember non-contract specific information from your last submitted EDS for one year. This information will be filled-in for you in your new EDS. You will have an opportunity to correct it if it has changed since your last filing. When you submit your new EDS, the information is saved and the one-year clock begins running anew.

Q: What are the system requirements to use the Online EDS?

A: The following are minimum requirements to use the Online EDS:

- A PDF viewer such as Adobe Reader is installed and your web browser is configured to display PDFs automatically. You may download and install Adobe Reader free at www.adobe.com/products/reader/
- Your web browser is set to permit running of JavaScript.
- Your web browser allows cookies to be set for this site. Please note that while we use cookies in the Online EDS, we do not use them to track personally identifiable information, so your privacy is maintained.
- Your monitor resolution is set to a minimum of 1024 x 768.

- While not required to submit an EDS, if you wish to view the training videos, you must have Adobe Flash Plugin version 9 or higher, speakers, and sound. Please note that very old computers may not be able to run Adobe Flash and will not be able to play the training videos. In that case, we encourage you to seek help using the Online EDS Manuals. You may download and install Adobe Flash Plugin free at <http://get.adobe.com/flashplayer>

The Online EDS has been tested on Internet Explorer 6.0 and 7.0 and Firefox 2.0 and 3.0 on Windows XP and Mac OS X. Although it should work on other browsers and operating systems, the City of Chicago cannot guarantee compatibility.

Attachment A – Guarantor Acknowledgement

(to be typed on Guarantor's Letterhead)

_____ (“the Respondent”) has submitted herewith a Statement of Qualifications (“SOQ”) in response to the Request for Qualifications for Design-Build Services, Specification No. 924070, issued on _____, 2019 for the South Airfield Detention Consolidation, as amended (the RFQ) pursuant to which it is seeking to be qualified by the City to provide the Services described in the RFQ.

The Guarantor hereby certifies that it will irrevocably, absolutely and unconditionally guarantee pursuant to a Guaranty Agreement the performance of all of the Respondent’s obligations under the DB Contract to be issued with the City’s Request for Proposals (“RFP”), in the event the Respondent is issued an RFP by the City and selected for execution of the DB Contract by the City.

Name of Guarantor: _____

Name of Authorized Signatory: _____

Signature: _____

Title: _____

** If more than one Guarantor is proposed, each firm shall be jointly and severally obligated and shall independently provide an executed copy of this Guarantor Acknowledgment. If a Guarantor is a joint venture, each firm in the joint venture shall be jointly and severally obligated and shall independently provide an executed copy of this Guarantor Acknowledgment.*

Attachment B – Guarantor Certificate of Authorization

I, _____, a resident of in the State of _____, DO HEREBY CERTIFY that I am the Clerk/Secretary of _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____; that I have custody of the records of the corporation; and that as of the date of this certification, _____ holds the title of _____ of the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Guarantor Acknowledgment submitted by the corporation as part of ("the Respondent's") response to the Request for Qualifications for the _____ issued by _____ on _____, 2019, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this day of _____, 2019.

(Affix Seal Here)

(Clerk/Secretary)

EXHIBIT 1

SCOPE OF SERVICES

Project Overview

The Design-Builder shall provide engineering, design, permitting, construction, testing and commissioning services for the South Airfield Detention Consolidation (SADC) project at O'Hare International Airport.

The existing Central Detention Basin (CDB) at O'Hare International Airport requires relocation or modification due to future development plans. The future development envisions new taxiways, aircraft apron areas, and terminal buildings around the existing CDB. The storm water conveyances and storage must be relocated and/or modified to accomplish this task. Schedule is a critical factor on this project as the work must be completed and operable by March 2022.

The project involves three (3) main components of work:

- Decommissioning and filling of the CDB for the proposed TAP development
- Expansion of the South Detention Basin (SDB) to compensate for the loss of storage volume in the CDB
- Construction of a new conveyance conduit to transmit current inflows into the CDB to the SDB

The proposed new conveyance conduit will consist of a 16-ft finished diameter tunnel to be constructed between the CDB and the SDB. A plan showing the various project components is provided as Sheet GC-101. The proposed tunnel alignment crosses under a number of existing taxiways and two active runways. It also crosses a roadway that is used for transporting cargo below the taxiways and runways. The alignment will cross in a depressed open area with an access road between two existing cargo tunnels.

Existing Conditions

Currently the CDB catches and stores runoff from adjacent airport property with a total storage volume of approximately 332 acre-feet below El 644.5. The CDB is approximately 40 feet deep with a floor level ranging between El 616 and 620. Several existing storm drains empty into the CDB. In addition, flow is conveyed from the CDB to the SDB via a series of conduits. The CDB provides detention storage and also stores peak inflows in the short term to avoid overloading the existing conveyance between the CDB and SDB. From the CDB, flow is pumped to the SDB at a rate of 15 cubic feet per second (cfs) as the system outflow permits.

The SDB, which is significantly larger than the CDB with a total storage volume of about 1495 acre-feet below El 644.5, functions in the same manner as the CDB. The SDB is approximately 45 to 50 feet deep with a floor level ranging between El 597 and 602. At the eastern end of the SDB there is a dewatering pump station that pumps the retained storm water to the City's Wastewater Treatment Plant. Appropriate treatment for the runoff is periodically required over winter months due to the presence of

glycol in the runoff from airport de-icing operations. This outflow is limited by agreement to no more than 25 cfs, and can be stopped by the Metropolitan Water Reclamation District of Greater Chicago (MWRD) at any time.

Both the CDB and SDB have impervious perimeter cutoff walls and base linings to prevent migration of retained storm water runoff from leaking into the groundwater aquifers. The cutoff walls consist of bentonite slurry walls extending to the top of hardpan clay. An underdrain system has also been constructed beneath each basin to prevent uplift failure of the linings. In addition, the fractured bedrock, which is relatively pervious and exists beneath both the basins, has been grouted around the perimeter of each basin to reduce horizontal flows to the underdrain system.

The principal geologic deposits present at the site consist of:

- Glacial **Till**, a compact, heterogeneous mixture of clay, silts, sands, gravels, and boulders;
- Glacial **Outwash**, predominantly loose to compact silty sands and sandy silt interlayered in places with gravelly sand and clayey silt;
- **Lacustrine** sediments, generally soft to stiff fine-grained materials ranging from fine sandy silts to clayey silts deposited in lakes; and
- Bedrock consisting of **Racine Dolomite** which is a variable unit consisting of gray, massive, vuggy dolomite and argillaceous, silty, fine grained, thin bedded, grayish brown dolomite. The top of the bedrock is typically moderately weathered with a greater fracture frequency than at deeper elevations. Joints and fractures in the weathered zone can be widened and enlarged by solution and can be relatively pervious in comparison to the deeper rock mass.

A geotechnical site investigation is currently underway and results will be made available with the RFP documents. Both a Geotechnical Data Report and Geotechnical Baseline Report will be provided.

Proposed Construction

Under the base design concept, the conduit is to be constructed as a soft ground tunnel using a pressurized closed-face tunnel boring machine (TBM) with a one-pass segmental liner installed behind the TBM. A preliminary tunnel profile is included as Sheets GC-102, 103, and 104. Since most of the soil within the tunnel horizon is cohesive in nature with minor inclusions of granular soils, it is anticipated that an earth pressure balance (EPB) type TBM will be an appropriate technology. However, it is the Design-Builder's responsibility to select the appropriate type of pressurized closed-face TBM based on the ground conditions that will be described in the GBR.

The tunnel is to be constructed from a launch box excavation at the SDB to a retrieval shaft at the CDB as shown on Sheet GC-101 with a total length of about 6130 feet. It is anticipated that the launch box excavation will be large enough to assemble the front end of the TBM and some of the trailing gear. A length of approximately 170 feet has been assumed in the base design concept.

The tunnel as proposed has been laid out as a gravity system, capable of discharging flow directly into the SDB. Because of this requirement, the tunnel will have a relatively small amount of overburden cover beneath runways, taxiways, and intervening areas, with cover ranging from about 21 to 40 feet. Stringent settlement limits have been established for both runways and taxiways as indicated below and the Contractor will be required to operate the TBM continuously (24/7) when under the influence zone of a runway. Beneath the depressed cargo roadway, the cover below the road surface is about 10 feet

as shown on Sheet GC-103. Because of a number of utilities existing under the cargo roadway, soil ground improvement and possibly utility relocation will be necessary beneath the roadway. An existing retaining wall will also require underpinning.

Once the tunneling is complete, a box culvert will be constructed within the launch box excavation and eventually extended into the expanded SDB as shown on Sheets GC-101 and 104. The box culvert will exit into the basin at an outfall structure with an invert elevation slightly above the invert of the SDB.

Existing conduits that drain into the CDB will need to be re-routed to connect to the receiving shaft with an appropriate drop manhole to channel flow into the tunnel.

The SDB will be expanded to the west and north as shown on Sheet GC-101. This expansion will require the construction of additional horizontal lengths of bentonite slurry walls to hardpan and permeation grout curtain walls within the fractured bedrock. The expansion will also require that base linings and underdrains be installed within the expanded footprint. A flood control wall will need to be constructed around the toe of the existing basin in areas being expanded to allow for excavation and construction activities below high water level to take place in-the-dry.

The filling of the CDB must also consider means for maintaining the aquifer separation provided by the existing hardpan layer. This may be addressed by requiring a liner or select impervious material at the level of the adjacent existing hardpan. Detailed technical specifications for the SDB expansion as well as the CDB filling will be provided with the RFP documents.

To prevent flooding on airport property, the existing CDB and SDB drainage system must be kept operable until such time that the tunnel and basin expansion is complete at which time the CDB can be taken out of service.

Services to be Provided by Design-Builder

The Design-Builder shall provide and pay for all design, labor, materials, tools, construction equipment, and other ancillary facilities necessary for proper execution, testing, commissioning, and final restoration work required for the functional and satisfactory delivery of the work. Any work and services which may be reasonably assumed as necessary to accomplish this objective shall be supplied by the Design-Builder.

The Design-Builder will be responsible for obtaining all required permits for the work. Some preliminary submittals will be made by CDA prior to Design-Builder NTP to expedite the permitting process.

The Design-Builder will be required to design all facilities to meet a 75-year design life.

In addition, the Design-Builder will be provided with a series of performance requirements in the RFP documents that will govern the work, including but not limited to the following:

- Settlement limits for runways and taxiways as follows:

Allowable Settlement and Angular Distortion for Runways and Taxiways

	Allowable Settlement (inches)		Allowable Angular Distortion	
	Threshold	Limiting	Threshold	Limiting
Runways	0.45	0.75	0.003	0.005
Taxiways	0.60	1.00	0.003	0.005

- The leakage exfiltration or infiltration shall not exceed 100 gallons per inch of pipe diameter per mile per day (Ten-State Standards)
- Maximum cutoff wall and post-grouting fractured bedrock permeability = 5×10^{-7} cm/sec (SDB)
- Minimum storage volume of expanded SDB = 1962 acre-feet

The Design-Builder must complete the Work by the following durations:

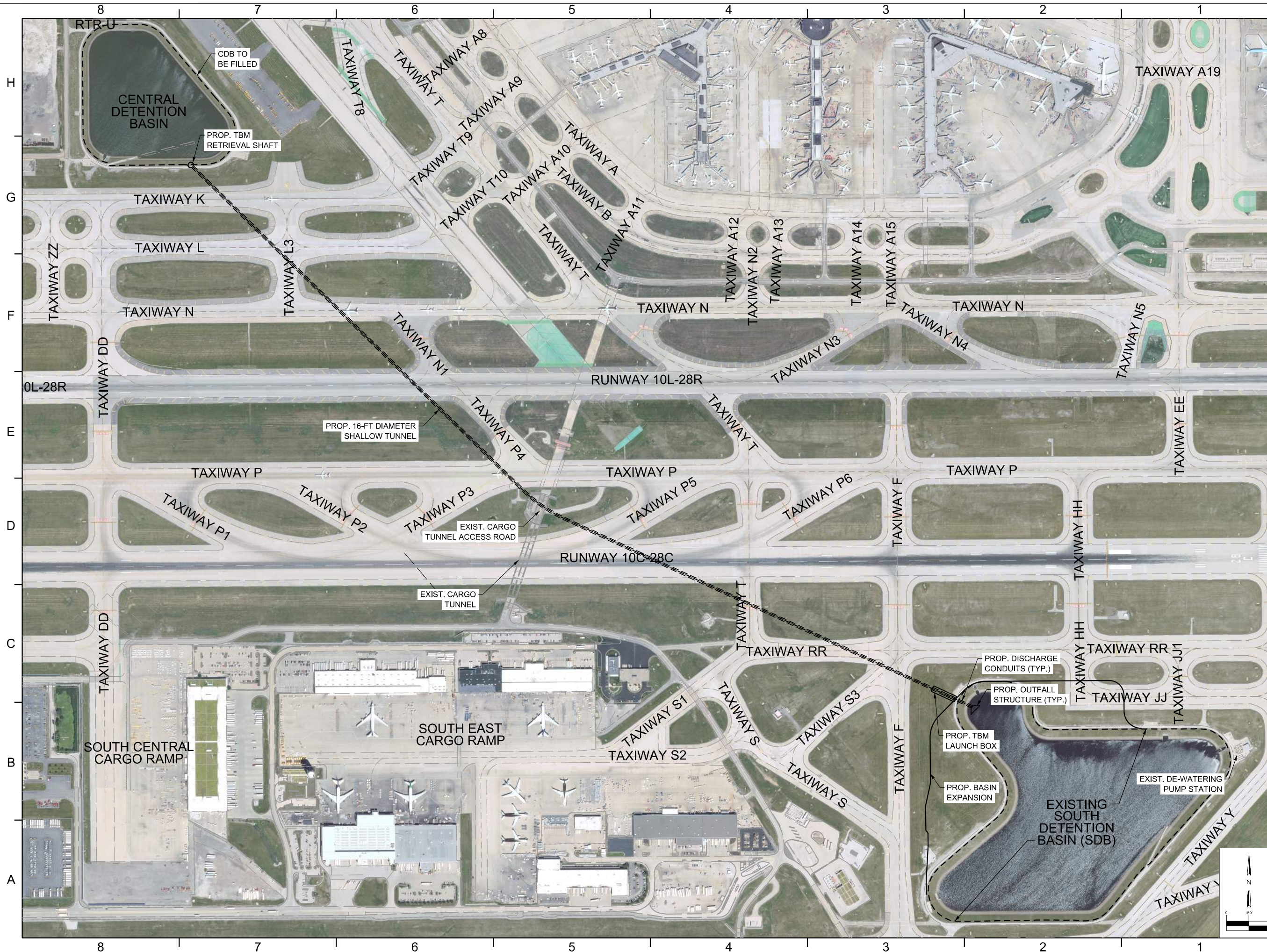
- Substantial Completion Date on or before 28 months after the date of Notice to Proceed which requires putting into service the new drainage tunnel and filling of the CDB.
- Final Completion Date on or before 32 months after the date of Notice to Proceed which requires obtaining acceptance by all applicable regulatory agencies including CDA of all Work and Services under the Contract, all remaining site restorations, as-built drawings and record documents, and all other remaining incomplete or unacceptable work items identified at or subsequent to Substantial Completion.

The Design-Builder will be allowed to propose alternate design concepts that can meet the project milestones and performance requirements, but will be required to price the base design concept. Alternate designs that are acceptable to CDA, responsive to the RFP requirements, and reduce the total contract price are encouraged and will be factored into the final pricing for selection.



RAHM EMANUEL
MAYOR

JAMIE L. RHEE
COMMISSIONER

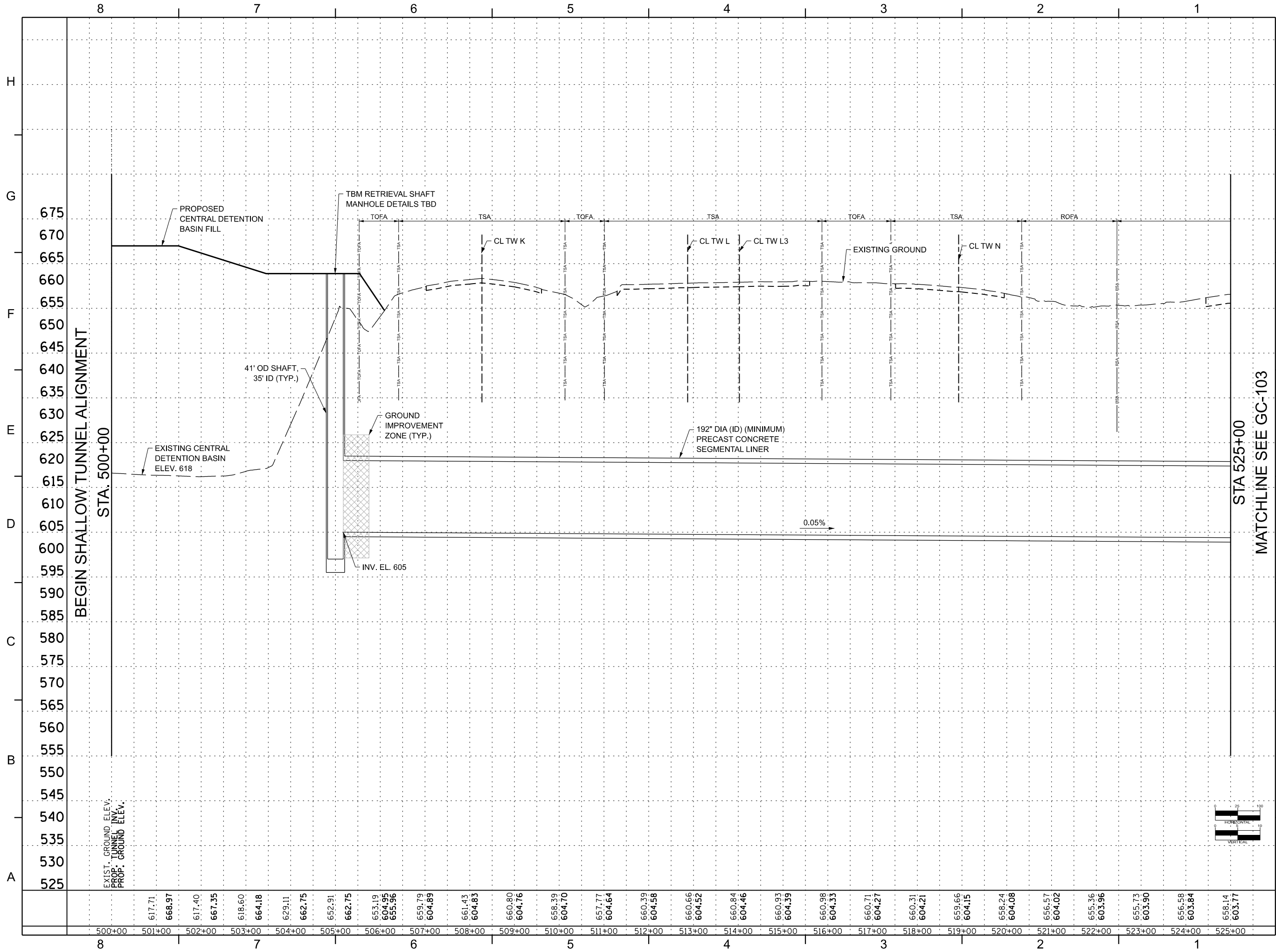
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**SOUTH AIRFIELD
DETENTION
CONSOLIDATION**

SHEET TITLE:
**DESIGN-BUILD
PROJECT COMPONENTS
SHALLOW TUNNEL ALTERNATIVE**

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O'HARE INTERNATIONAL AIRPORT
CITY OF CHICAGO

RAHM EMANUEL
MAYOR
JAMIE L. RHEE
COMMISSIONER



APPROVED AS WORKING PLAN
BY:

REV DATE DESCRIPTION

PROJECT NAME:

**SOUTH AIRFIELD
DETENTION
CONSOLIDATION**

SHEET TITLE:

**SHALLOW TUNNEL PROFILE
SHEET 1 OF 3**

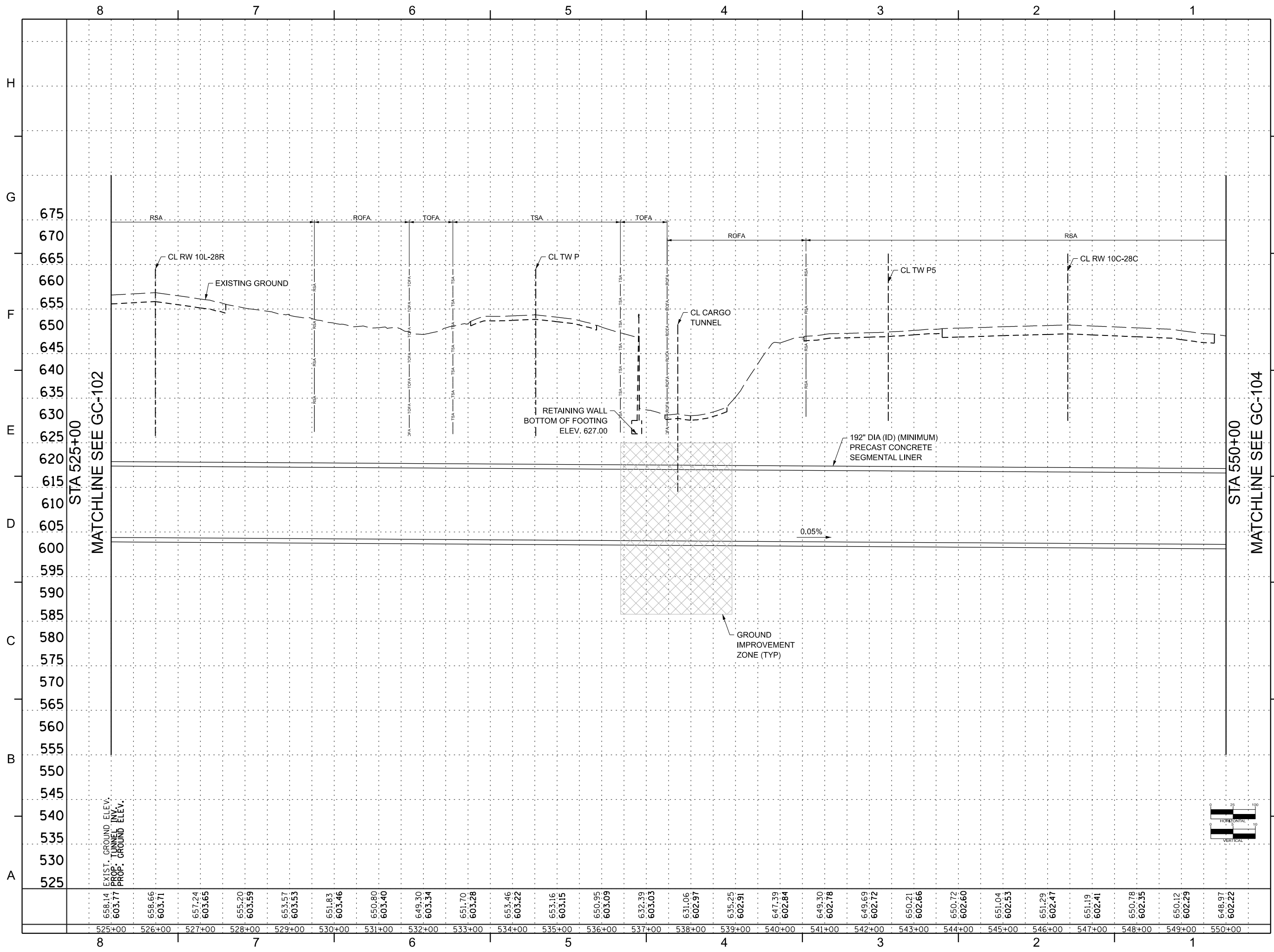
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OF AVIATION

O'HARE INTERNATIONAL AIRPORT
CITY OF CHICAGO

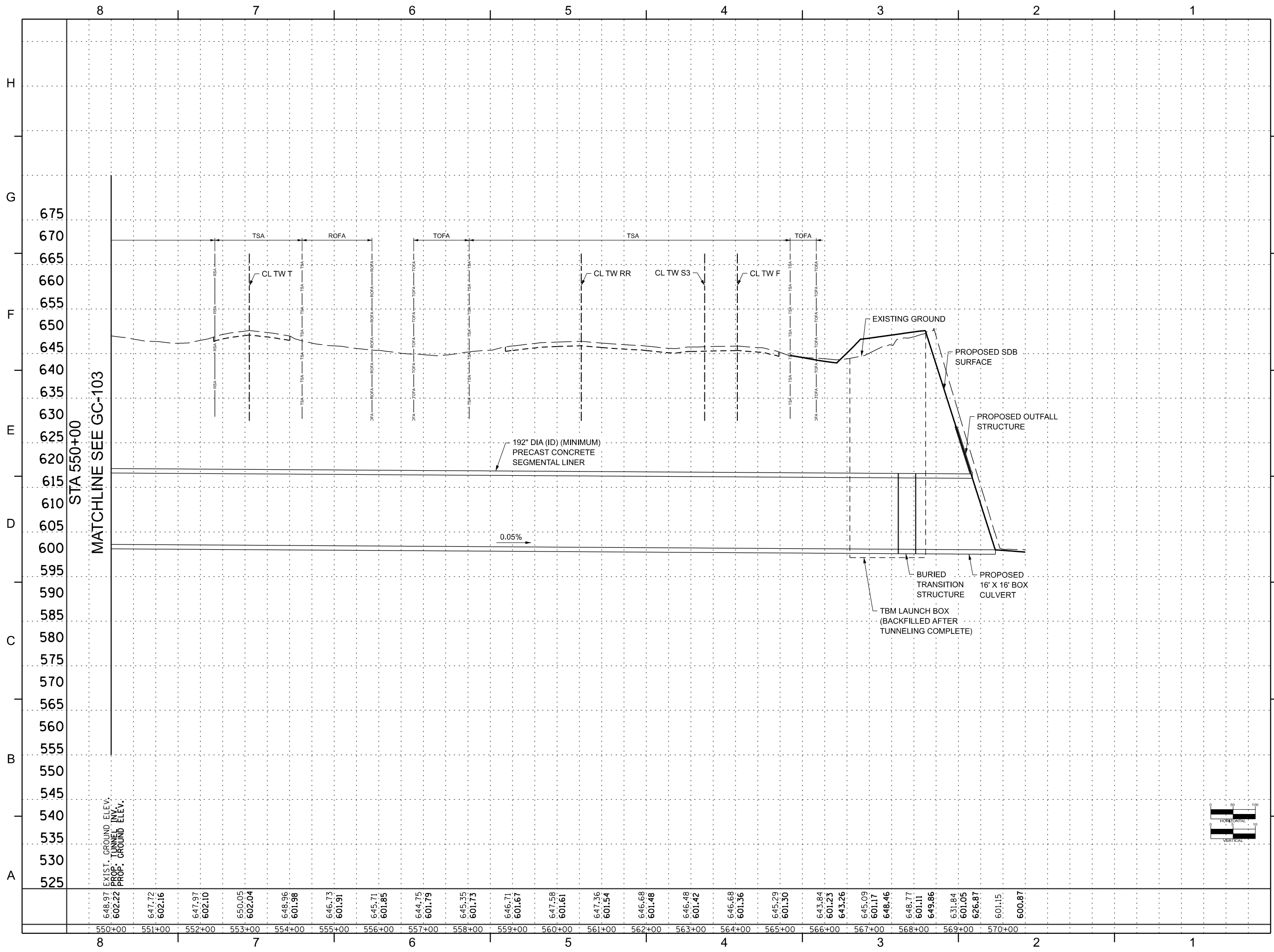
RAHM EMANUEL
MAYOR

JAMIE L. RHEE
COMMISSIONER

BPC Airport Partners
A JOINT VENTURE OF
BOWMAN, BARRETT & ASSOCIATES,
PRIMERA, CH2M HILL, AND DB STERLIN
Master Civil Engineer

APPROVED AS WORKING PLAN BY:		
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**CHICAGO
DEPARTMENT
OF AVIATION**

O'HARE INTERNATIONAL AIRPORT
CITY OF CHICAGO

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Master Civil Engineer

APPROVED AS WORKING PLAN
BY:

REV	DATE	DESCRIPTION

PROJECT NAME:
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DETENTION
CONSOLIDATION**

SHEET TITLE:
**SHALLOW TUNNEL PROFILE
SHEET 3 OF 3**

DESIGNED: DRAWN: CHECKED:

PROJECT NO.: OH.6151.410.195.10
DATE: 09/07/2018

SHEET NO. GC-104	REVISION
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Specification No. **924070**

P.O. No. XXXXX

Vendor No. XXXXX

SAMPLE
FORM OF AGREEMENT

BETWEEN

CITY OF CHICAGO
CHICAGO DEPARTMENT OF AVIATION

AND

XXXXXXXXX



FOR

**DESIGN-BUILD SERVICES FOR
THE SOUTH AIRFIELD DETENTION CONSOLIDATION**
O'Hare International Airport

RAHM EMANUEL
MAYOR

Shannon E. Andrews
Chief Procurement Officer

Rev 1/17/19

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Exhibit F – Special Conditions Regarding Minority Owned Business Enterprise Commitment and Women Owned Business Enterprise Commitment

*Exhibit G – Key Personnel**

*Exhibit H – Form of Design Builder's Guarantee**

*Exhibit I – Monthly Report Form **

*Exhibit J – Economic Disclosure Statement and Affidavit**

*Exhibit K – MBE/WBE Compliance Plan**

Exhibit L – Sexual Harassment Policy Affidavit (MCC 2-92-612)

* To Be Included with the Final Executed Agreement

AGREEMENT

This Agreement for Design-Build Services (the "Agreement") is entered into and made effective as of this __ day of _____, 2019 (the "Effective Date"), by and between the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Aviation (the "City"), and _____, a(n) _____ corporation, with offices at _____ (the "Design-Builder").

RECITALS

WHEREAS, the City through its Department of Aviation ("CDA" or "Department") issued a Request for Qualifications for Design-Build Services dated _____ ("RFQ"), seeking qualified design-builders to provide the engineering, design, permitting, construction, testing and commissioning services (the "Services") for the implementation of the project titled "South Airfield Detention Consolidation" (the "Project") at Chicago O'Hare International Airport, Chicago, Illinois, 60666 (the "Airport"); and

WHEREAS, the Project consists of the expansion of the South Detention Basin, the interception of the storm drainage currently flowing into the Central Basin, the construction of a new storm drain tunnel to convey flow to the South Detention Basin, and the backfilling of the Central Basin at the Airport. The Project will be subject to multiple requirements including, but not limited to those associated with being located within an operating airfield, environmental and permitting, and providing adequate storm drainage protection for the Airport facilities at all times. The connection from the interception of the tributary drainage system at the Central Basin to the South Basin will be through a shallow large diameter tunnel; and

WHEREAS, Design-Builder responded to the RFQ and represented to the City that the Design-Builder has the required knowledge, expertise, skill, experience and other resources necessary to provide the Services required by the Agreement; and

WHEREAS, the City, in reliance upon the Design-Builder's representations, desires to retain the Design-Builder under the terms and conditions set forth in this Agreement to provide the Services; and

WHEREAS, the Design-Builder desires to be retained by the City to perform the Services; and

WHEREAS, the City desires through its Design-Builder to meet or exceed the MBE and WBE requirements set forth in Exhibit F; and

WHEREAS, the Design-Builder desires to meet or exceed the MBE and WBE requirements set forth in Exhibit F through its engagement of qualified MBE and WBE Subcontractors for the Services; and

WHEREAS, the Design-Builder responded to the Request for Proposal for Design-Build Services dated _____ ("RFP") and presented a technical and price proposal; and

WHEREAS the City evaluated the technical and price proposal submitted by the Design-Builder and determined the proposal to be of best value compared to other proposers and meeting the requirements of the City; and

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the City and Design-BUILDER (collectively, the "Parties" or individually "Party"), hereby agree as follows:

ARTICLE 1. INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated in and made a part of this Agreement.

ARTICLE 2. INCORPORATION OF EXHIBITS

The following attached Exhibits are made a part of this agreement:

- Exhibit A: Scope of Services
- Exhibit B: Contract Documents
- Exhibit C: Project Schedule
- Exhibit D: Compensation
- Exhibit E: Insurance and Bonding Requirements
- Exhibit F: Special Conditions Regarding Minority Owned Business Enterprise Commitment and Women Owned Business Enterprise Commitment
- Exhibit G: Key Personnel
- Exhibit H: Form of Design Builder's Guarantee
- Exhibit I: Monthly Report Form
- Exhibit J: Economic Disclosure Statement and Affidavit
- Exhibit K: MBE/WBE Compliance Plan
- Exhibit L: Sexual Harassment Policy Affidavit (MCC 2-92-612)

ARTICLE 3. DEFINITIONS AND USAGE

3.1. Definitions

The following words or phrases have the meanings ascribed for the purposes of the Agreement:

- a) Addendum. An official revision of the Bid Documents issued by the Chief Procurement Office prior to Bid Opening Date.
- b) Additional Services. Those Services which are within the general scope of Services of this Contract, but beyond the description of services in the Detailed Specifications and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Contract.
- c) Airports. Chicago O'Hare International Airport and Chicago Midway International Airport.
- d) Airside. Generally, those areas of an Airport which requires a person to pass through a security checkpoint to access. References to "sterile areas" generally mean Airside areas within terminal buildings. References to "Airfield", "Aircraft Operations Area", "AOA", or "Secured areas" generally mean outdoor Airside areas or areas not accessible to passengers.
- e) Agreement or Contract. This agreement for design-build services, including all attached exhibits, schedules, drawings, documents, and all those exhibits, schedules, documents and/or drawings

incorporated by reference, all component parts and all amendments, modifications or revisions made in accordance with the terms hereof.

- f) Attachments. All the exhibits and other documents attached to the Bid Documents and/or incorporated into the Contract by reference.
- g) Authorized City Representative. The person or entity retained by the City to provide project and program management services for the Project and act as the City's Owner Representative. Upon execution of this Agreement, the City shall provide the Design-Builder with written notice of the Authorized City Representative
- h) Baseline Schedule. Fixed project target schedule used in measuring project progress and contract performance.
- i) Bid. Refers to an offer made by a Bidder in response to an invitation for bids which includes a binding proposal to perform the Contract which the City may rely on and accept, or in the case of an RFP or RFQ, the submission/proposal in response to that solicitation which may be subject to negotiation.
- j) Bidder. A person, firm, or entity submitting a Bid in response to an invitation for bids; for RFPs and RFQs, references may be made to "Respondents." Once the Contract is awarded the Design-Builder shall assume that all references to a Bidder or Respondent and such attendant obligations apply to the Design-Builder.
- k) Bid Opening Date. The date and time publicly advertised by the Chief Procurement Officer as the deadline for submission of Bids; this may be referred to as a "Proposal Due Date" for RFP and RFQ solicitations.
- l) Bid Documents. All the documents issued by the Chief Procurement Officer, or referenced by the Chief Procurement Officer as being available on the City's website and incorporated by such reference, in connection with an invitation for bids or proposals. Except for such Bid Documents as are posted on the City's website and incorporated by reference, all Bid Documents must be submitted by a bidder on the Bid Opening Date.
- m) Business Day. A Monday through Friday, excluding legal holidays, or City shut-down days, in accordance with the City of Chicago business calendar.
- n) Calendar Day. All calendar days in accordance with the world-wide accepted calendar.
- o) Chief Procurement Officer ("CPO"). The chief executive of the City's Department of Procurement Services ("DPS"), and any representative duly authorized in writing to act on the Chief Procurement Officer's behalf.
- p) City. City of Chicago, a municipal corporation and home rule government under Sections 1 and 6(a), Article VII, of the 1970 Constitution of the State of Illinois.
- q) Commissioner. The chief executive of any City department that participates in this Contract (regardless of the actual title of such chief executive), and any representative duly authorized in writing to act on the Commissioner's behalf with respect to this Contract.

- r) **Contact Person.** The Design-Builder's management level personnel who will work as liaison between the City and the Design-Builder and be available to respond to any problems that may arise in connection with Design-Builder's performance under the Contract.
- s) **Contract Documents.** Upon notice of award from the CPO, the contract consisting of all Bid Documents relating to a specific invitation for bids or proposals and all amendments, modifications, or revisions made from time to time in accordance with the terms thereof; this Agreement, including but not limited to the exhibits to this Agreement, and all amendments, modifications, or revisions made from time to time in accordance with the terms of the Agreement; and all of the documents necessary for the construction of the Project, including, but not limited to, technical specifications, drawings, addenda, bulletins and modifications, which are exhibits to or incorporated by reference within this Agreement.
- t) **Contract Sum.** The Contract Sum is the maximum amount payable to the Design-Builder for the performance of the Services and the Work in accordance with the terms and conditions of the Agreement, the Contract Documents and the Legal Requirements. The Contract Sum includes any and all costs of the Services and the Work, and any and all fees due to Design-Builder for the performance of the Services.
- u) **Contract Time.** The time measured from the date the City issues the notice to proceed to the date of Substantial Completion.
- v) **Day.** Day means calendar day unless otherwise specifically defined.
- w) **Deliverables or Design Documents.** The documents, in any format (electronic or hard copy), that the Design-Builder is required to provide to the City under this Agreement, including, without limitation, all contract drawings, specifications, the Project manual, estimates, schedules, presentations, reports, forms, recommendations, analyses and interpretations.
- x) **Department.** The City of Chicago Department of Aviation, also referred to as the "CDA" and/or the using/user Department
- y) **Design-Builder or Contractor.** The person or entity identified above that has been awarded the Contract by the CPO to perform the Services required by this Agreement. Any references to the Bidder or Proposer in the Contract Documents is understood to apply to the Design-Builder
- z) **Design Services.** That portion of the Services as set forth in Exhibit A allocated to design of the Project.
- aa) **Design Professionals.** Architects, engineers – civil, structural, mechanical, electrical, plumbing and heating ventilating, and others whose services require licensing by the State of Illinois.
- bb) **Detailed Specifications.** The contract specific requirements that includes but is not limited to a detailed description of the scope, term, compensation, price escalation, and such other additional terms and conditions governing this specific Contract.
- cc) **Field Order.** A Field Order is a written order to the Contractor, signed by the Authorized City Representative with the prior approval of the Commissioner and Chief Procurement Officer.

- dd) Final Completion. Final Completion occurs on the date when the Design-Builder has performed all of its obligations under the Agreement, and the Services and Work have been accepted by the City. Final payment becomes due and payable on the date of Final Completion. The date of Final Completion will be confirmed by a Certificate of Final Completion executed by the City and Design-Builder.
- ee) Holidays. The official City Holidays when the City is generally closed for business which includes: New Year's Day, Dr. Martin Luther King Jr.'s Birthday, Lincoln's Birthday, President's Day, Pulaski Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day
- ff) Key Personnel. The job titles and individuals identified on Exhibit G of this Agreement.
- gg) MCC. The abbreviation for the Municipal Code of Chicago
- hh) Contract Modification. Is a document signed by the Design-Builder and the City as set forth in Article 10.
- ii) Project. The design and construction of the South Airfield Detention Consolidation at O'Hare International Airport as described in the RFQ and the RFP.
- jj) Project Schedule. The Project Schedule shall include both the Design Services and the Work for the Project.
- kk) Purchase Order. A written purchase order from a Department referencing this Contract. Purchase Orders may also be referred to as "Blanket Releases".
- ll) Services. All Design Services, the Work, duties, responsibilities and tasks that are necessary and appropriate to the provision of design-build services by the Design-Builder to the City under the terms and conditions of this Agreement whether ancillary or as required by the Agreement that Design-Builder provides in performance of its obligations under this Contract.
- mm) Specification. The Bid Documents, including but not limited to the Detailed Specifications.
- nn) Standard of Care. The standard of care and skill for design-builders experienced and skilled in the design and construction of projects of similar quality, complexity, size, function and location comparable to the Project.
- oo) Subcontractor(s). Any person or entity hired or engaged by the Design-Builder to provide any part or parts of the Services and/or Work to be provided by Design-Builder under this Agreement and shall include any person or entity hired or engaged by a Subcontractor of any tier, suppliers and material men, whether or not in privity with Design-Builder.
- pp) Substantial Completion of the Work. Substantial Completion of the Work, or of a designated portion of the Work, occurs when the Work is sufficiently complete in accordance with the Contract Documents so that the City may occupy or utilize the Work, or the designated portion thereof, for the use for which it is intended. The date of Substantial Completion for all or any portion of the Work shall be confirmed by a Certificate of Substantial Completion executed by the City, and Design-Builder.

qq) Work. Work includes, unless specifically excepted by the Contract Documents, the furnishing of all Services, materials, labor, equipment, resources, services, supplies, materials, plant, tools, scaffolding, transportation, superintendence, permits, inspections, , insurance, taxes, and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is designed, furnished, produced, constructed, or built pursuant to the Contract Documents, and/or listed in the Schedule of Values.

3.2. Interpretation of Agreement

(a) Order of Precedence. The order of precedence of the component contract parts will be as follows:

- Amendments or Modifications to this Agreement
- If funded by the Federal government or State of Illinois, terms required by the Federal Government or State of Illinois, as applicable, whether set out in this document, in a Task Order Request (if applicable), or otherwise.
- Standard provisions and form provisions relating to this procurement type
- Scope of Work and Detailed Specifications
- Task Order (if applicable)
- All other parts of this Contract.

Provided, however, in the event of an inconsistency between terms set out among different component parts of the Contract, or terms set out within a Contract part, notwithstanding the order of precedence noted above, the term that is most favorable to the City controls, unless expressly stated otherwise.

(b) Captions and Headings. The captions and headings of the various sections of the Agreement are used solely for reference purposes and do not construe, nor will they be deemed or used to construe, interpret, limit or extend the meaning or scope of any work, clause, paragraph or provision of the Agreement.

(c) The term "include," in all its forms, means "include, without limitation," unless expressly stated otherwise.

(d) Terms of one gender imply the other gender unless the context clearly indicates otherwise. Use of the singular includes the plural, and vice versa.

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

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

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

ARTICLE 4. RELATIONSHIP OF THE PARTIES

4.1. City's Intent

The intent of the City in entering into this Agreement is to secure design and construction services from the Design-Builder. The Parties hereby acknowledge and agree that the Services are for design and construction and pursuant to the terms of this Agreement, any risk or liability for any cost of the Services shall be the responsibility of the Design-Builder.

4.2. Relationship Throughout the Project.

The City and Design-Builder agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing. The City and Design-Builder will endeavor to promote harmony and cooperation among all participants in the Project. Design-Builder shall cooperate with the City in furthering the City's interests, and perform the Services in a thorough, diligent, expeditious and economical manner consistent with the interests of the City and in conformance with the Contract Documents.

- (a) The City and Design-Builder shall perform their obligations with integrity, ensuring, at a minimum, that (i) conflicts of interest shall be avoided or disclosed promptly to the other Party; and (ii) the Parties warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, subcontractors or others from whom they may be liable, to secure preferential treatment.
- (b) Cooperation with Other Contractors. Unless otherwise provided in Detailed Specifications, if separate contracts are let for work within or adjacent to the project site as may be further detailed in the Contract Documents, Design-Builder must perform its Services so as not to interfere with or hinder the progress of completion of the work being performed by other contractors. Design-Builder shall assume all liability, financial or otherwise, in connection with the Agreement, and shall protect and hold harmless the City from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by Design-Builder because of the presence and operations of other contractors working within the limits of its work or Services. Design-Builder shall assume all responsibility for all work not completed or accepted because of the presence and operations of other contractors. Design-Builder must as far as possible, arrange its work and space and dispose of the materials being used, so as not to interfere with the operations of the other contractors within or adjacent to the limits of the project site.
- (c) The Design-Builder agrees to implement such measures as may be necessary to ensure that its staff and its Subcontractors will be bound by the provisions of this Agreement. The City will be expressly identified as a third party beneficiary in the subcontracts and granted a direct right of enforcement thereunder.

4.3. The Authorized City Representative

- (a) The Commissioner of Aviation will assign an individual to be the Authorized City Representative for the Project. The Commissioner will notify the Design-Builder of the assignment in writing at the

time of execution of the Agreement. The Authorized City Representative may be changed from time to time.

- (b) The Design-Builder must route all Project communication and notices to the Authorized City Representative. The Authorized City Representative will also route responses from the City to the Design-Builder.
- (c) The Authorized City Representative has the authority to reject all or any portion of Work that does not conform to the Contract Documents.
- (d) The Authorized City Representative will not be responsible for acts or omissions of the Design-Builder or any Subcontractor.
- (e) The Authorized City Representative's services shall include, but not be limited to, the following:
 - 1. Reviewing and monitoring, on a periodic basis, the Design-Builder's baseline and updated schedules for compliance with the Contract milestone dates and the master critical path method ("CPM") milestone dates.
 - 2. Representing the City at weekly meetings with the City, Design-Builder, and others to review the Project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues, and field problems.
 - 3. Reviewing Design-Builder's payment applications in accordance with the City's policies and procedures and submitting the payment applications to City for approval and payment.
 - 4. Establishing an on-Site organization line of authority to implement all construction phases of the Project in a coordinated and efficient manner.
 - 5. Establishing and implementing procedures for, and maintain coordination among, the City, Design-Builder, and other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.
 - 6. Coordinating the submission, processing, procurement and assembly of all required permits, licenses, and certificates with the Design-Builder and arranging delivery of same to the City.
 - 7. Conducting Site observations of the Design-Builder and Project to ensure that Work is progressing on schedule and in accordance with the requirements of the City and the Contract Documents.
 - 8. Reviewing the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken by Design-Builder to remediate the deficiency.
 - 9. Receiving and reviewing all shop drawings, materials and all other required Submittals. Requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the City for concurring approval.
 - 10. Monitoring the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
 - 11. Receiving and reviewing all requests for additional compensation and time extensions sought by the Design-Builder.
 - 12. Conducting a comprehensive final inspection of the Project to verify that the materials furnished and Work performed are in accordance with the Contract Documents.
 - 13. Expediting the assembly and delivery to the City of all papers required by the Contract Documents, including but not limited to "as-built" drawings, guarantees, warranties, and

operations and maintenance manuals. Reviewing, approving, and submitting such documents to the City upon completion of the Project.

4.4. Independent Contractor

This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Design-Builder and the City. The rights and the obligations of the parties are only those set forth in this Contract. Design-Builder must perform under this Contract as an independent contractor and not as a representative, employee, agent, or partner of the City. This Contract is between the City and an independent contractor and nothing provided for under this Contract constitutes or implies an employer-employee relationship such that:

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

4.5. Coordination with Others

4.5.1. Other Contractors on Site.

- (a) The City reserves the right to let other contracts in connection with the Work. The Design-Builder will afford other contractors reasonable opportunity for the introduction and storage of their materials and for the performance of their work. Design-Builder will coordinate and tie-in, where appropriate, its Work with that of others in an acceptable manner and perform the Work in proper sequence to the work of others. Such work being performed by the City's separate contractors will not in any way constitute acceptance or partial acceptance of the Work by the City.
- (b) The Design-Builder 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 Site.
- (c) If any part of the Design-Builder's Work depends, for proper performance or result, upon the work of any other contractor, the Design-Builder will inspect and measure the work of the other Contractor and promptly report to the Authorized City Representative any defects or discrepancies in such work. The Design-Builder's failure to inspect and make such report will constitute an acceptance of the other contractor's work as fit and proper for the proper performance of the Work, except as to latent defects.
- (d) Wherever work being done by any such contractors or subcontractors is contiguous to Work covered by the Contract Documents, the respective rights of the parties will be established by the Authorized City Representative to secure the completion of the various portions of the Work in a coordinated manner.

- (e) All requirements of this Section shall be mutual of other contractors on the Site toward the Design-Builder.

4.5.2. Mutual Responsibility of Contractors.

- (a) The Design-Builder is responsible for Work not completed or accepted due to the presence and operations of other contractors.
- (b) The Design-Builder is liable, financially or otherwise, in connection with this Contract, and must protect and save harmless the City from any and 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.
- (c) The Design-Builder, where separate contractors or their subcontractors are employed on the Site, will not make claims against the City for loss or damage or injury caused by any fault or negligence of such other contractor or subcontractor. The Design-Builder will look solely to such contractors or subcontractors for recovery for any such damage or injury.
- (d) If any separate contractor or its subcontractor suffers loss or damage through any acts or omission on the part of the Design-Builder, or any of its subcontractors, the Design-Builder will reimburse such other contractor or subcontractor. If such separate contractor or its subcontractor asserts any claim against the City on account of any damage or loss alleged to have been so sustained, the City will notify the Design-Builder, and the Design-Builder will save the City harmless against such claims as provided in Section 4.09 of the Agreement.
- (e) Notwithstanding the foregoing paragraphs 1 – 4 of this Section, in the event that Design-Builder has met its standard of care as set forth in the Agreement, and the City is in privity with the other contractor that damaged or delayed, or was damaged or delayed by Design-Builder, the City will meet its obligations and enforce its rights under the respective contracts in an effort to resolve any claims or disputes between Design-Builder and other contractors.

4.6. No Third Party Beneficiaries

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

4.7. Assigns

4.7.1. No Assignment of Contracts.

Pursuant to 65 ILCS 8-10-14, Design-Builder may not assign this Contract without the prior written consent of the CPO. In no case will such consent relieve the Design-Builder from its obligations, or change the terms of the Contract. The Design-Builder must notify the CPO, in writing, of the name of any proposed assignee and the reason for the assignment; consent to which is solely in the CPO's discretion. For purposes of this paragraph, if the Design-Builder undergoes a change in control, the change in control is deemed an assignment of the Agreement. A change in control is defined as a transfer of more than 50% of the equity ownership of the Design-Builder during any 12-month period. In the event of an assignment by the Design-Builder without the prior written approval of the CPO, the

City will have the right to immediately terminate the Agreement without fault or responsibility. The Design-Builder further acknowledges that the Design-Builder represented to the City the availability of certain members of the Design-Builder's staff who will be assigned to Project; therefore, in the event of the unavailability of such members because such members have left the employment of Design-Builder or are physically unable to work on the Project, the Design-Builder must notify the CPO and Commissioner in writing, and must assign equally qualified members of the Design-Builder's staff, as approved by the CPO and the Commissioner, to the Project.

4.7.2.No Pledging or Assignment of Contract Funds without City Approval.

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

4.7.3.City's Right to Assign.

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

4.7.4.Successors and Assigns.

Except as otherwise provided in this Agreement, all of the terms and conditions of this Contract are binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees, and assigns.

ARTICLE 5. DESIGN-BUILDER'S OBLIGATIONS

5.1. Scope of Work

The Design-Builder shall perform the Services set forth in Exhibit A – Scope of Services, along with any and all tasks reasonably related to, necessary for and inferable from the Services required by Exhibit A, in accordance with the provisions of the Contract Documents, for the furnishing and installation of all labor, materials, and equipment necessary to complete the Work for the expansion of the South Detention Basin, the interception of the storm drainage currently flowing into the Central Basin, the construction of a new storm drain tunnel to convey flow to the South Detention Basin, and the backfilling of the Central Basin at the Airport.

5.2. Providing Services

The Design-Builder must not honor any verbal requests for Services or perform or bill for any Services without receipt of a written Purchase Order issued by the Department. Any work performed by the Design-Builder without a written Purchase Order is done at the Design-Builder's risk. Consequently, in the event a written Purchase Order is not provided by the City, the Design-Builder releases the City from any liability whatsoever to pay for any work performed provided without a Purchase Order.

5.3. Additional Services

Additional Services means those Services which are within the general scope of Services of this Contract, but beyond the description of services in the Detailed Specifications and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Contract. Any Additional Services requested by the Department require the approval by the City in accordance with the provisions of this Agreement before Design-Builder is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

5.4. Standard of Care for Design Services and Performance of the Work

Design-Builder agrees that, in all of its activities under this Agreement, Design-Builder and its representatives will act in accordance with the applicable standards of its profession and always in the best interests of the City. Design-Builder must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Design-Builder must provide the City copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its Subcontractors or others on its behalf. All drawings, specifications and other documents prepared by the Design-Builder, its consultants and design professionals hired by or through any of them shall comply with all of the requirements of all laws, statutes, ordinances, codes, rules, regulations, lawful orders and the requirements of any public authorities which apply to, or bear upon, the Design Services, the Work, or the Project or the performance of the Work including without limitation laws addressing accessibility for persons with disabilities (collectively "Applicable Laws") in effect at the time such drawing, specification or other document is prepared. Design-Builder acknowledges that it may be entrusted with or may have access to valuable and confidential information and records of the City and with respect to that information only, Design-Builder agrees to be held to the standard of care of a fiduciary. Design-Builder shall perform and complete its obligations set forth in the Agreement, in strict accordance with the following: (i) the standard of care and skill for design-builders experienced and skilled in the design and construction of projects of similar quality, complexity, size, function and location comparable to the Project (the "Standard of Care") and (ii) the requirements of the Contract Documents. Design-Builder agrees to furnish its skill and judgment consistent with the Standard of Care and as necessary to fulfill its obligations under the Contract Documents.

5.5. Design Builder's Responsibilities

- (a) The Design-Builder must provide all Services required to be performed and provide, or cause to be provided, all of the labor, necessary tools, machinery, materials, schedules and other documents and all facilities for the construction of the Project as described herein and other work necessary to perform and complete in a workmanlike manner, and within the specified time, all of the Work in strict accordance with the Contract Documents. Design-Builder is solely responsible for selecting the design, engineering means, methods, techniques, sequences, and procedures used in performing the Work.
- (b) The Design-Builder is solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. The Design-Builder must verify the figures shown on the Drawings before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. The Authorized City Representative will not be responsible for laying out the Work.
- (c) The Design-Builder is responsible for the coordination of the various parts of the Work so that no part is left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and the Design-Builder.
- (d) The Design-Builder must require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.
- (e) The Design-Builder shall at all times be responsible for the performance of the Work by its Subcontractors. The Design-Builder will manage and coordinate the Work of Subcontractors such that the Work progresses in an efficient, orderly and timely manner. In the event of any claim or dispute between Subcontractors, or any Subcontractor and Design-Builder, Design-Builder shall

manage the resolution of any such claim or dispute. The Design-Builder shall at all times deal with its Subcontractors in good faith, and use all reasonable efforts to resolve claims or disputes in a prompt, cost-effective manner.

- (f) The Work is under the charge and care of the Design-Builder until Final Completion and Acceptance of the Work by the City, unless otherwise specified in the Contract Documents. The Design-Builder assumes all responsibility for injury or damage to the Work by action of elements, fire or any other causes whatsoever, including, injury or damage arising from the execution or non-execution of the Work, except for injury or damage caused by other contractors not working for the Design-Builder which the Design-Builder could not have prevented through its exercise of the standard of care provided in this Agreement. The Design-Builder must rebuild, repair, restore, and make good, at no additional cost to the City (except for injury or damage caused by other contractors not working for the Design-Builder which the Design-Builder could not have prevented through its exercise of the standard of care provided in this Agreement), all injuries or damages to any portion of its Work before Final Completion and Acceptance of the Work. When equipment or materials are furnished to the Design-Builder by the City for use or inclusion in the Work, the Design-Builder's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by Design-Builder. Design-Builder shall ensure that Builder's Risk insurance and all other applicable coverages required in Exhibit E to the Agreement remain in place up to the date of Final Completion and Acceptance whereupon the Work is accepted by the City. The parties further acknowledge and agree that Design-Builder shall remain liable for any damage that it or its Subcontractors cause to the Work.
- (g) The Work will not be considered complete and accepted until the Design-Builder receives written notice from the City confirming the Final Completion and Acceptance of the Work.

5.6. Design Services

- (a) The Design-Builder's Services shall commence, upon the City's issuance of a Notice to Proceed, the Design Services are more particularly as set forth in Exhibit A. The Design-Builder shall provide the Design Services in accordance with the Standard of Care and at all times in compliance with the overall direction of the City.
- (b) The Design-Builder shall be liable for any errors, omissions or instances of non-compliance in the Design Documents and shall provide necessary sketches and/or drawing revisions to correct such errors, omissions or instances of non-compliance at the Design-Builder's sole cost and expense.
- (c) Effect of City Approvals. The City's approval of any of the Design Documents shall in no way serve to relieve Design-Builder of any of its obligations with respect to such Design Documents under this Agreement.
- (d) Design-Builder shall review and resolve, to the City's satisfaction, all of the City's comments and shall consult the City in the revision of each submittal of documents as required until approved by the City. Design-Builder shall furnish the City and its Authorized City Representative with 2 half size sets, a PDF file, and a CAD file of all plans and drawings for each portion of each phase for the City's review and comment. Design-Builder shall not proceed from one phase, or part of one phase, to the next without first obtaining the City's written approval and authorization. It is understood that the phases, or parts of phases, of design (both off site and on site), and other services required herein,

may, upon the City's written authorization, be overlapped, interrupted, or advanced as required by the Project Schedule. Such comments, revisions, approvals, authorizations and schedule shall not waive Design-Builder's obligations and responsibilities to perform its complete professional services in accordance with all terms and conditions of this Agreement.

- (e) Design-Builder shall be responsible for the design, engineering and construction of the Project so that the Project, as so designed, engineered and constructed:
 - 1. Will operate functionally and efficiently in accordance with the criteria in the Contract Documents and will be fully integrated with the design, engineering and construction of the other elements of the Project; and
 - 2. Will be in compliance with all federal, state and local laws including, but not limited to, all local laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over the Project.
- (f) The Design-Builder must keep at the Site, for reference, a complete set of documents pertaining to the Project, including, but not limited to, the complete Contract Documents, copies of all drawings and plans, all additional and revised drawings and plans, all orders issued to the Design-Builder by the City that relate to the Work, and all submittals, including shop drawings, meeting minutes, reports, payment applications, and correspondence relating to the Work, and a set of updated as-built drawings.
- (g) In addition to the requirements of Exhibit A, Design-Builder is responsible to prepare and complete the construction documents for all portions of the Work. Design Services shall be performed only by design professionals licensed in Illinois and in accordance with the requirements of the applicable licensing law. Design-Builder shall coordinate, and shall cause its Subcontractors and consultants and, in turn, their sub-subcontractors and sub-consultants of any tier to coordinate their design with other consultants retained by the City. Design-Builder shall provide electronic copies of all design documents and the documents that comprise the drawings and specifications to the City and to all separate contractors, and consultants hired by the City as applicable to the Project.
- (h) All portions of the Design-Builder's Deliverables shall: (i) be consistent with and satisfy all applicable Project Parameters, design criteria and performance specifications of the City and other requirements set forth in the Contract Documents; (ii) satisfy all of the City's programmatic requirements; (iii) conform to the Schedule of Values in Exhibit D D; (iv) comply with all applicable legal requirements; and (v) be consistent with applicable Standard of Care. Design-Builder shall cause completion of its Deliverables as necessary to avoid any delay in the progress of the Work. All documents prepared by Design-Builder shall be submitted promptly to the Authorized City Representative for review, comment, and acceptance or rejection. In the event any portion of the Design-Builder's Deliverables fail to meet any provisions of this Agreement or if the City, rejects or returns the documents prepared by Design-Builder with comments, then Design-Builder shall be responsible for modifying the Deliverables and the necessary documents and resubmitting same until such documents are accepted. The costs required for such modifications shall be included in the line-item amount in the Schedule of Values for preparing the documents; and costs that exceed such amount shall be at Design-Builder's sole cost. If Design-Builder does not correct the documents within 30 days after receipt of notice from the City specifying the reason(s) for rejection, then the City, by written notice, may treat the failure to do so as a default of this Contract. When the City approves of such documents in writing, then all documents so prepared shall be considered

Drawings and Specifications and part of the Contract Documents. Further, Design-Builder shall cooperate, and shall cause its Subcontractors and consultants, and in turn, their sub-subcontractors and subconsultants of any tier to submit Deliverables to the Authorized City Representative in a timely manner to permit sufficient time to review the same, and cooperate with the City and respond in a timely manner to requests for information and clarifications in connection with the Deliverables. In addition, Design-Builder shall cause its Subcontractors and consultants, and, in turn, their sub-subcontractors and subconsultants of any tier, to meet all of the requirements set forth in this Section.

- (i) Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Contract and the City's acceptance of partial or incomplete Deliverables in no way relieves Design-Builder of its commitments under this Contract.
- (j) Design-Builder, at no cost to the City, shall cause revisions to any documents prepared by Design-Builder as necessary to obtain permits, licenses, and other approvals of governmental authorities, and to correct any deficiencies in such documents.
- (k) Design-Builder hereby agrees that any language in the Contract Documents that limits or relieves Design-Builder of any responsibility or liability for, or grants Design-Builder rights or remedies in connection with, any Drawings, Specifications, or other Contract Documents, shall not apply to the Deliverables, and Design-Builder shall remain fully responsible for all aspects of the Deliverables and for the adequacy, completeness, accuracy, and sufficiency of all Drawings and Specifications prepared by Design-Builder. The City's review of any and all documents or other matters pertaining to the Project is not for the purpose of determining the adequacy, accuracy, completeness, or sufficiency of such documents or other similar matters and shall in no way create any liability or responsibility on the part of the City for inadequacies, errors, inconsistencies, or omissions in any approved documents. Design-Builder hereby acknowledges and agrees that any acceptance by the City is made in reliance on the skill, judgment, and recommendations of Design-Builder and its architects and engineers, without any independent investigation, review, or evaluation by the City.
- (l) Design-Builder shall supervise and direct the Work required by the documents prepared by the Design-Builder using Design-Builder's best skill and attention so that, when completed, such Work is in compliance with all the requirements of the Contract Documents.
- (m) All work performed in advance of approvals of the design is at the Design-Builder's sole risk. Design-Builder agrees that in no event shall the Contract Sum be increased as a result of the final Deliverables, unless the City authorizes in writing a change in the scope of, or performance criteria applicable to the final Deliverables.
- (n) Design-Builder shall ensure that City is an intended and express third-party beneficiary of either: (i) the agreements between Subcontractors and the independent design professional, or, (ii) if the design professional is an employee of Subcontractor, the Subcontract. In either case, these agreements shall require that all those responsible for Deliverables maintain professional liability insurance in accordance with the insurance requirements specified in Exhibit E.

5.7. Compliance with the Americans with Disabilities Act and Other Laws Concerning Accessibility

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

5.8. Permits and Licenses.

(a) Permits

1. The Design-Builder is responsible for obtaining all permits, including but not limited to sewer, water, crane, fence, driveway, and building permits, as prescribed by the City of Chicago and public utilities, and any other permits that may be necessary. The City shall be responsible for the cost of the building permit; any and all permit review fees or charges will be borne by the Design-Builder and included in the Contract Sum.
2. The Design-Builder will confer with the Authorized City Representative prior to applying for the City building permit, and the parties will agree on the process for obtaining the City building permit prior to Design-Builder's application for such permit. The Authorized City Representative will assist the Design-Builder in the building permit process, but the Design-Builder is solely responsible for obtaining all required permits in a timely fashion, subject to the provisions of this Agreement.
3. The nature of the foundation systems required on portions of this Project may be such that submittals, permits, and coordination will be required with the City of Chicago Office of Underground Coordination. If such systems are required by the Contract, the Design-Builder, representing its familiarity with these systems and permit processes, is responsible for any and all submittals, fees, coordination, and any other items required to secure approvals required by the authorities having jurisdiction for the installation of these systems.

(b) Licenses and Regulations

1. The Design-Builder shall include in the Contract Sum, all costs necessary to obtain, and pay for all licenses and certificates of inspection required or necessary for the execution and completion of the Work.
2. The Design-Builder must give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work

3. Where requirements of the applicable building codes differ, the Authorized City Representative shall determine which requirement shall govern and the Design-Builder shall comply with the governing requirement.
4. The Design Builder must submit copies of all permits, licenses, and similar permissions obtained, and receipts for fees paid, to the Authorized City Representative.

5.9. Site Conditions and Inspection

- (a) 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 the Design-Builder by the City.
- (b) The Design-Builder must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Design-Builder about the Contract Documents before commencing the Work or any portion of the Work. No allowance will be made to the Design-Builder 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, Design-Builder must have such Work performed by a surveyor as specified in this Agreement.
- (c) If conditions are encountered at the site that are:
 1. Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or
 2. Pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, including the presence of unanticipated Hazardous Materials, then the Design-Builder will take no action to disturb the area until providing written notice to the Authorized City Representative immediately, and receiving notice from the Authorized City Representative as to how and when to proceed.
- (d) The Design-Builder must follow the requirement of written notice above and the requirements set out in Article 12, regarding a claim for changed site conditions. The Design-Builder must also provide written notice of any claim regarding the changed site condition to the Authorized City Representative within three (3) business days after its discovery. The notice of changed site conditions must state the nature of the changed site condition, its location, and the work that is affected by it. The Design-Builder's failure to provide the written notice to the Authorized City Representative within three (3) business days after discovery of the changed site condition constitutes a waiver of the claim and the right to file a dispute to the Commissioner under Article 12.

5.10. Project Health and Safety

The Design-Builder is responsible for project health and safety as of the date of execution of the Agreement.

5.10.1. Worker's Health and Safety

- (a) Design-Builder has sole and complete responsibility for implementation of a Site-Specific Safety Program ("SSSP"). The Design-Builder's SSSP must include the Work of all the Design-Builder's Subcontractors. The SSSP must be submitted to the Authorized City Representative within thirty (30) days following Notice to Proceed.
- (b) The Design-Builder shall designate a safety representative for the project. This person shall be present whenever work is being performed at the site or whenever delivery of materials, products or equipment is being made at the site. The safety representative must have successfully completed the OSHA 30-hour course for the construction industry, be current in first aid/CPR from a nationally recognized organization and possess at least three years of construction safety project experience. The Design-Builder must provide evidence of completion.
- (c) Although the Authorized City Representative will observe construction and give the Design-Builder opinions and suggestions about safety defects and deficiencies, the Authorized City Representative's suggestions on safety will in no way relieve the Design-Builder of its responsibility for safety on the Project. The Design-Builder has sole responsibility for Project safety.
- (d) The Design-Builder must comply with all applicable Federal, State, and City health and safety laws and regulations, which will be considered as part of these specifications. The Design-Builder and its subcontractors will also comply with the requirements of the CDA Construction Safety Manual as well as all requirements of the Construction Safety Phasing Plan.
- (e) The Design-Builder must take any precautions that may be necessary to render all portions of the Work secure in every respect and to decrease the possibility of accidents from any cause. The Design-Builder will furnish and install 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 consultants and inspectors during the performance of the Work.
- (f) The Design-Builder must keep on the site of the Work, fully equipped first aid kits readily accessible at all times. The Design-Builder will designate a person on each shift, acceptable to the Authorized City Representative, to be in charge of first aid and will cause such person to receive proper instructions therein.
- (g) Only such materials and equipment as are necessary for the construction of the Work under this Contract, as determined by the Authorized City Representative, will be placed, stored or allowed to occupy any space of the site of the Work. If gasoline, flammable oils, or other highly combustible materials must be stored at the site, they will be stored in approved safety containers.
- (h) The Design-Builder must, on a monthly basis, provide the Authorized City Representative a statistical safety report, recording the number of project hours worked with injuries or illnesses that may have occurred during the previous month. This is a monthly deliverable and must be included with the pay application each month.

5.10.2. Hazardous Materials

- (a) If the Design-Builder encounters material on the Site reasonably believed to be hazardous which has not been identified in the Contract Documents or rendered harmless, the Design-Builder will immediately stop Work in the Area affected and report the condition to the Authorized City Representative in writing. The Work in the affected area will be resumed in the absence of Hazardous Materials, or when it has been rendered harmless, by written notification from the Authorized City Representative to the Design-Builder.

- (b) The Design-Builder will not be required to perform, without its consent, any Work in the presence of Hazardous Materials.
- (c) If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from material or substance encountered on the Site by the Design-Builder, the Design-Builder, will, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Authorized City Representative in writing.

5.10.3. Coordination With Other Contractors - Safety

The Design-Builder will cooperate with any other contractor that may be performing work on the Site in connection with the compliance with regulations of OSHA and all other federal, state, and municipal laws, rules and regulations relating to Site safety and practice including, as may be relevant, correcting Work within abatement periods, requesting extensions on abatement periods when work has been done by other contractors, and furnishing such supporting information or material as may be necessary to fully protect the rights of the City, its representatives, and other contractors on pending or prospective violation orders.

5.10.4. Public Health and Safety

- (a) The Design-Builder must prevent the public from gaining access to the Project Site.
- (b) The Design-Builder will take all necessary precautions to ensure the safety of the public and to prevent accidents or injury to persons or damage to property adjacent to the Site where the Work is being performed.
- (c) The Design-Builder will erect and properly maintain at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards for the protection of the public and post signs warning against the dangers created by falling materials, open excavations, and all other hazardous conditions.
- (d) The Design-Builder must remove all snow and ice, and salt all sidewalks adjacent to the project site for the proper protection of pedestrians pursuant to Section 10-8-180 of the Chicago Municipal Code.
- (e) If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City of Chicago, the Design-Builder agrees to erect and maintain such barriers, and during the night, such 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. The Design-Builder is liable for all damage caused by the Design-Builder, its agents, employees, or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and indemnifies the City pursuant to the Agreement.

5.10.5. Construction Site Cleanliness

- (a) The Design-Builder must comply with all requirements of Section 13-32-125 of the "Chicago Municipal Code entitled, "Construction site cleanliness."

- (b) The Design-Builder must mow all grass or weeds on the site as directed by the Authorized City Representative.

5.10.6. Accidents

- (a) If death, serious injury, including any time an ambulance is called to the site, or serious damages are caused, the Design-Builder must notify the Authorized City Representative immediately via telephone or messenger.
- (b) The Design-Builder will promptly report in writing to the Authorized City Representative all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. It will be the responsibility of the Design-Builder to submit a written accident report, within 24 hours of the occurrence, containing the following:
 - i. Name of Person or Persons involved and Home Address(es)
 - ii. Location of Occurrence
 - iii. Time of Day and Date
 - iv. Description of Occurrence
 - v. Statements of Witnesses
 - vi. Signature of Design-Builder's Superintendent
 - vii. Any other documentation of the accident, if any (i.e. a police report, OSHA report, medical documentation, etc.)
- (c) The Design-Builder must send a copy of the accident report to the City and to the Authorized City Representative.
- (d) If any claim is made by anyone against the Design-Builder or any Subcontractor on account of any accident, the Design-Builder will promptly report the facts and full details of the claim in writing to the Authorized City Representative.

5.11. Design-Builder's Quality Program

5.11.1. Scope of Design-Builder's Quality Program (CQP)

- (a) Quality is the responsibility of the Design-Builder. This responsibility includes development and implementation of a Design-Builder's Quality Program for quality management and construction activities. The CQP must satisfy the requirements of the Contract Documents. The Design-Builder must develop and implement an appropriate quality program to achieve a level of quality consistent with the Contract requirements.
- (b) Throughout the course of the work, the CQP will be subject to continual monitoring to assess the effectiveness of the quality processes employed by the Design-Builder. The Design-Builder's implementation of and compliance with its CQP are subject to monitoring and audit by the City. The Contactor must address the City's concerns and audit findings. The City will pursue its remedies under the Contract for Design-Builder's failure to appropriately resolve such concerns and findings.

5.11.2. Design-Builder's Quality Program

- (a) The Design-Builder must establish, implement, and maintain an effective quality program to manage, control, and document the work and assure that the Work conforms to the requirements of the Contract. The Design-Builder must communicate, implement, and follow the CQP at all levels of its organization.
- (b) The CQP must describe the policies, plans, procedures, and organization necessary to exercise control and ensure quality. It must cover materials, equipment, workmanship, fabrication, and operations furnished both onsite and offsite by the Contactor. The CQP must be an internally approved document, signed by the Design-Builder's management representative, and must contain a revision number and effective date. The CQP must also include a written statement, signed by the Design-Builder's Quality Representative, that the program satisfies the requirements of the Contract.
- (c) Organization of the quality functions and activities for the Project must be supported by the management structure of the Design-Builder. The choice and level of application of the quality program must be appropriate for the Project.
- (d) Responsibility for achievement of quality must be acknowledged by all management, construction and support personnel of the Design-Builder. Subcontractors (including suppliers), testing laboratories, and consultants employed by the Design-Builder must also conform to the commitments specified in the Contract and the CQP.

5.11.3. Submittal of Design-Builder's Quality Program

Within fourteen (14) days after the execution of the Agreement, the Design-Builder must provide its internally approved CQP to the Authorized City Representative for review and acceptance. If the Design-Builder fails to submit its CQP within the required time, or if the CQP is not accepted, the City may suspend the Work until the Design-Builder furnishes an acceptable CQP. The Design-Builder shall not receive a time extension for the period of any such suspension.

5.11.4. Acceptance of the Design-Builder's Quality Program

The Authorized City Representative is responsible for reviewing and accepting the CQP. This acceptance is conditional based on satisfactory performance throughout the course of the work. As work progresses, the Design-Builder may be required to revise the CQP to maintain a quality of construction consistent with the Contract. Should this revision of the CQP be required, the revised CQP will again be subject to acceptance by the Authorized City Representative.

5.11.5. Proposed Changes to the Design-Builder's Quality Program

The Design-Builder must notify the Authorized City Representative, in writing, of any proposed change to the CQP. Any changes to the accepted CQP will be subject to the same acceptance process stated above.

5.12. Subcontracts and Subcontractors

5.12.1. Subcontracts.

- (a) No part of the goods, work, or services to be provided under this Contract may be subcontracted without the prior written consent of the CPO; but in no case will such consent relieve the Design-Builder from its obligations, or change the terms of the Contract. Further, substitution of a previously approved Subcontractor without the prior written consent of the CPO is not permitted. The Design-Builder must notify the CPO of the names of all Subcontractors to be used and shall not employ any that the CPO has not approved. Prior to proposing the use of a certain Subcontractor, the Design-Builder must verify that neither the Subcontractor nor any of its owners is debarred from or otherwise ineligible to participate on City contracts. This information can be found on the City's website:

http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp/svcs/debarred_firms_list.html

- (b) The Design-Builder will only subcontract with competent and responsible Subcontractors. If, in the judgment of the Commissioner or the CPO, any Subcontractor is careless, incompetent, violates safety or security rules, obstructs the progress of the services or work, acts contrary to instructions, acts improperly, is not responsible, is unfit, is incompetent, violates any laws applicable to this Contract, or fails to follow the requirements of this Contract, then the Design-Builder will, immediately upon notice from the Commissioner or the CPO, discharge or otherwise remove such Subcontractor and propose an acceptable substitute for CPO approval. Removal and substitution must be in compliance with any applicable requirements of the MBE/WBE or DBE program.
- (c) All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Contract. Upon request of the City, Design-Builder must promptly provide a copy of its agreement(s) with its subcontractor(s). All subcontracts must contain provisions that require the subcontracted activity be performed in strict accordance with the requirements of this Contract, provide that the Subcontractors are subject to all the terms of this Contract, and are subject to the approval of the CPO. If the subcontract agreements do not prejudice any of the City's rights under this Contract, such agreements may contain different provisions than are provided in this Contract with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the activity to be performed.
- (d) The terms and conditions of the Subcontracts that will be utilized by the Design-Builder in contracting for the performance of the Work required by this Agreement are subject to the review and approval of the City. The Design-Builder shall not award Subcontracts to any vendor that has been debarred by the City of Chicago, or has otherwise been deemed ineligible to contract with the City.

5.12.2. Collateral Assignment of Subcontracts.

The Design-Builder hereby collaterally assigns any or all subcontracts to the City, effective upon the City's exercise, in its sole discretion, of its rights to assume such assignment as a remedy for Design-Builder's default or in the event of early termination. The Design-Builder must require each of its Subcontractors (including material suppliers) to consent to a collateral assignment to the City of its respective subcontract with the Design-Builder. The Design-Builder's subcontracts must include

language stating: "Design-Builder has collaterally assigned this subcontract to the City of Chicago, effective upon written assumption of such assignment by the City in the event of Design-Builder's default or early termination of Design-Builder's contract with the City. Subcontractor hereby consents to such assignment and assumption. Subcontractor acknowledges and agrees that, in the event of such an assignment and assumption, the City will have no liability to Subcontractor for work performed by Subcontractor prior to the effective date of the assignment and assumption and that Subcontractor shall look solely to Design-Builder for any compensation or other obligations arising under the subcontract prior to such date."

5.12.3. No Contractual Relationship with City.

Notwithstanding anything to the contrary herein, neither the City's approval of Subcontracts nor any other requirement for Subcontractors set forth herein shall be construed as creating any contractual relationship between the City, the CDA or the Authorized City Representative and any Subcontractor. Design-Builder shall be responsible for all acts or omissions of any Subcontractor or any other person employed by Design-Builder.

5.13. MBE/WBE Compliance

5.13.1. Aspirational Goals for the Project. Unless otherwise expressly provided for in this section, Design-Builder shall comply with Exhibit F - Special Conditions Regarding Minority and Women-owned Business Commitments ("Special Conditions").

5.14. Workforce Development

5.14.1. The Design-Builder shall prepare and submit for review and approval a workforce development plan which plan shall include but not be limited to the following:

(a) MBE/ WBE program:

- Targeted outreach program that includes the CDA, Design-Builder and assist agencies
- Plan for unbundling some bid packages to meet the Project goals and pair bid package scopes with the capabilities of the local MBE/ WBE certified contractors.
- Plan for developing a small contractor bridge bid bond program in conjunction with the City
- Mentor/ protégé and contractor training program
- Establishment of an MBE/ WBE Community Advocacy Group
- Early intervention program for Subcontractors that encounter issues with cash flow and permits during contract execution
- Workshops for Subcontractors to assure access to easily implementable administrative procedures for bidding, invoicing, submittals - using approved Project software, claims, and badging
- Identification of non-traditional opportunities for MBE/WBE businesses such as insurance, safety equipment, technology, signage, translation services and services for construction office facilities (rentals, MEP, services)
- Monthly reports to track contract goals and actual participation; and remediation measures for contracts and program elements that are lagging against the goals

(b) Workforce and community hiring program:

- Gaps analysis to identify skilled trades with a lack of diversity
- Outreach program to unions for increased rates of minority and female participation in apprenticeship programs
- Transportation assistance
- Process for continuous improvement of workforce recruitment and retention utilizing information and data from firms, assist agencies and employees
- Job fairs in various areas of the City
- Facilitating interaction between primes, Subcontractors and existing training programs such as those at City Colleges of Chicago - Dawson Skills Center and Chicago Public Schools – Dunbar Technical Institute
- Partnerships with City of Chicago sister agencies to support CDA's commitment to provide job-readiness training to underserved communities including MOPD - Mayor's Office for People with Disabilities; DFSS – Department of Family & Support Services; and Veterans Affairs
- Monthly reports to track contract workforce goals, actual hiring and retention rates, and remediation measure for contracts and program elements that are lagging against such goals

5.15. Design-Builder's Personnel

5.15.1. Key Personnel. Design-Builder must not reassign or replace Key Personnel listed in Exhibit G attached hereto without the written approval of the City. Removal or reassignment of Key Personnel without the City's prior written consent shall be deemed an Event of Default and material breach of Contract. The City may at any time in writing notify Design-Builder that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed in the Agreement in Exhibit G. Upon receipt of such notice, Design-Builder must immediately suspend the Key Person or Key Persons from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to approval by the City.

5.15.2. Adequate Staffing. Design-Builder must, upon receiving a fully executed copy of this Agreement, assign and maintain for the duration of the Agreement, an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services through the completion of the Program. The Design-Builder must include among its staff the Key Personnel and positions as identified in the Agreement and specified in Exhibit G. The level of staffing may be revised from time to time by notice in writing from Design-Builder to the City and written approval by the City. The Design-Builder's Key Personnel shall not be removed or reassigned from the Project without prior written approval from the City.

5.15.3. Competency of Workers. The Design-Builder must employ only competent and efficient laborers, mechanics or artisans, who are qualified for the positions set forth in Exhibit G. Whenever, in the opinion of the City or its representatives, any worker is careless, incompetent, violates safety or security rules, obstructs the progress of the Work, is unqualified, acts contrary to instructions, acts improperly, or fails to follow the safety requirements of this Contract, the Design-Builder must, upon request by the Authorized City Representative, remove such worker from the Work. The Design-Builder must not permit any person or worker to enter any part of the

Work or any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.

5.15.4. Administration and Supervision of the Work.

- (a) The Design-Builder will furnish a competent and adequate staff as necessary for the proper administration, coordination, and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the Site to complete the Work in accordance with all requirements of the Contract Documents. In the event the City determines, in its sole discretion, that additional supervision or administration is required, Design-Builder shall furnish sufficient personnel to perform such supervision or administration or if exhausted at Design-Builder's own expense.
- (b) Subsequent to notice of contract award, but prior to the Notice to Proceed, the Design-Builder will select a Project Manager and submit his/her résumé to the Authorized City Representative for the approval of the City. The Project Manager will have full responsibility for the prosecution of the Work with full authority to act in all matters as necessary for the proper coordination, direction, commitment of resources, and technical administration of the Work. The Project Manager will attend meetings at such places and times as will be decided by the City in order to render reports on the progress of the Work. The Design-Builder will not change Project Manager without the consent of the City.

5.15.5. Superintendent.

- (a) The Design-Builder must keep on the Project throughout its duration a competent, experienced and qualified Superintendent and any necessary assistants, all of whom must be satisfactory to the City. This Superintendent's résumé will be submitted to the Authorized City Representative for approval at the time the Performance and Payment Bond and certificate(s) of insurance are submitted, or sooner if so requested by the City. The Superintendent will be present at the Site when Design-Builder's personnel and/or Subcontractors are present.
- (b) The Superintendent will not be changed without the consent of the City, unless the Superintendent proves to be unsatisfactory to the Design-Builder or becomes unavailable due to reasons beyond the control of Design-Builder. In order to change the Superintendent, the Design-Builder will give the Authorized City Representative written notice and submit for approval the qualifications of the proposed replacement Superintendent at least 15 Days prior to the intended change.
- (c) The Superintendent will represent the Design-Builder in the absence of the Project Manager and all directions given to the Superintendent will be as binding as if given to the Project Manager.

5.15.6. Surveyor. Whenever required, the Design-Builder will engage and pay for the services of a surveyor. The surveyor is subject to the approval of the City. The surveyor must be licensed in the State of Illinois, must not be an employee of the Design-Builder, and must not have any interest in the Contract.

5.15.7. Nondiscrimination. In performing this Agreement, the Design-Builder will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of

race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice. Design-Builder certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 et seq.; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., of the Municipal Code (1990), as amended. Design-Builder will further furnish such reports and information as may be requested by the City, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

5.15.8. Employment Procedures; Preferences and Compliance. Salaries of employees of the Design-Builder performing Services under this Agreement will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. Design-Builder certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). Design-Builder will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et seq. If, in the performance of this Agreement, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the City may withhold from the Design-Builder, out of payments due to the Design-Builder, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Agreement and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the City for and on account of the Design-Builder to the respective employees to whom they are due, as determined by the City in its sole discretion.

5.15.9. Wages

Contractor must pay the highest of (1) prevailing wage/Davis-Bacon rate, if applicable; (2) minimum wage specified by Mayoral Executive Order 2014-4; "Living Wage" rate specified by MCC Sect. 2-92-610; (3) Chicago Minimum Wage rate specified by MCC Chapter 1-24, or (4) the highest applicable State or Federal minimum wage.

5.15.9.1. Minimum Wage, Mayoral Executive Order 2014-1

Mayoral Executive Order 2014-1 provides for a fair and adequate Minimum Wage to be paid to employees of City contractors and subcontractors performing work on City contracts.

If this contract was advertised on or after October 1, 2014, Design-Builder must comply with Mayoral Executive Order 2014-1 and any applicable regulations issued by the CPO. The Minimum Wage to be paid pursuant to the Order as of July 1, 2018 is \$13.80 per hour. The Minimum Wage must be paid to:

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

Every July 1, the hourly wage specified by the Executive Order shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor. Any hourly wage increase shall be rounded up to the nearest multiple of \$0.05. Such increase shall remain in effect until any subsequent adjustment is made. On or before every June 1, the City shall make available to City Contractors a bulletin announcing the adjusted minimum hourly wages for the upcoming year.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of Design-Builders operations, does not directly relate to the services provided to the City under the contract, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on City property or at a City jobsite. It is also not required to be paid by employers that are 501(c)(3) not-for-profits.

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

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

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

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

5.15.9.2. Living Wage Ordinance

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

if the Design-Builder has 25 or more full-time employees, and if at any time during the performance of the contract the Design-Builder and/or any subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then The Design-Builder's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the Contract term when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Contract term.

As of July 1, 2018 the Base Wage is \$12.55. The current rate can be found on the Department of Procurement Services' website.

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

Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Contract, Design-Builder 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 Design-Builder must pay the prevailing wage rates.

The Design-Builder must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The Design-Builder agrees to provide the City with documentation acceptable to the CPO demonstrating that all Covered Employees, whether employed by the Design-Builder or by a subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit the Design-Builder 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 years.

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

5.15.9.3. Chicago Paid Sick Leave Ordinance

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

5.15.9.4. Equal Pay

The Design-Builder will comply with all applicable provisions of the Equal Pay Act of 1963, 29 U.S.C. 206(d) and the Illinois Equal Pay Act of 2003, 820 ILCS 112/1, *et seq.*, as amended, and all applicable related rules and regulations including but not limited to those set forth in 29 CFR Part 1620 and 56 Ill. Adm. Code Part 320.

- (a) Design-Builder's attention is called to the generally prevailing hourly rate of wages, as determined by the Illinois Department of Labor, which are hereby incorporated into the Contract Documents as if fully set forth herein.

- (b) As a condition of making payment to the Contract, the City may request the Design-Builder to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workers employed on this Contract in accordance with Illinois law.

5.16. Records

- (a) Design-Builder must maintain accurate and complete records of any and all costs by the Design-Builder, its consultants and Subcontractors in connection with the Project, the Services and the Work. Such records will be maintained in accordance with recognized commercial accounting practices. The City may examine such records at the Design-Builder's offices or field office upon reasonable notice during normal business hours. Design-Builder must retain all such records in accordance with the requirements of the Local Records Act, 50 ILCS 205/1 et seq., but in no event for any period of less than five (5) years from the Date of Final Completion.
- (b) To the extent that any records created by Design-Builder would be considered "Public Records" for purposes of the Illinois Freedom of Information Act, 5 ILCS 140 et seq., Design-Builder is obligated to fully cooperate with the City in complying with requests for records in accordance with the timelines for response set forth in the Act.

5.17. Indemnification of the City

- (a) Design-Builder must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees (collectively, the "Indemnified Parties,") from and against any and all Losses (as defined below), in consequence of the granting of this Contract or arising out of or being in any way connected with Design-Builder's performance under this Agreement, except as otherwise provided in 740 ILCS 35 "Construction Contract Indemnification for Negligence Act" if it applies, including those related to: injury, death or damage of or to any person or property; any infringement or violation of any property right (including any patent, trademark or copyright); failure to pay or perform or cause to be paid or performed Design-Builder's covenants and obligations as and when required under this Agreement or otherwise to pay or perform its obligations to any subcontractor; the City's exercise of its rights and remedies under this Agreement; and injuries to or death of any employee of Design-Builder or any subcontractor under any workers compensation statute. When 740 ILCS 35 applies, indemnification provided by the Design-Builder to the Indemnified Parties will be to the maximum extent permitted under applicable law.
- (b) "Losses" means, individually and collectively, liabilities of every kind, including monetary damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, fines, judgments or settlements, any or all of which in any way arise out of or relate to the negligent or otherwise wrongful errors, acts, or omissions of Design-Builder, its employees, agents and subcontractors.
- (c) Design-Builder will promptly provide, or cause to be provided, to the Commissioner and the Corporation Counsel copies of such notices as Design-Builder may receive of any claims, actions, or suits as may be given or filed in connection with the Design-Builder's performance or the performance of any Subcontractor and for which the Indemnified Parties are entitled to indemnification hereunder.

- (d) At the City Corporation Counsel's option, Design-Builder must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Design-Builder of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.
- (e) The Design-Builder shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractors, agents, or servants of Design-Builder even though the claimant may allege that the Indemnified Parties were in charge of the work or service performed under the Agreement, that it involves equipment owned or furnished by the Indemnified Parties, or allege negligence on the part of the Indemnified Parties. The City will have the right to require Design-Builder to provide the City with a separate defense of any such suit.
- (f) To the extent permissible by law, Design-Builder waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due to third parties arising out of any Losses, including but not limited to any limitations on Design-Builder's liability with respect to a claim by any employee of Design-Builder arising under the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute.
- (g) The indemnities in this Section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during the Design-Builder's performance of work or services beyond the term. Design-Builder acknowledges that the requirements set forth in this Section to indemnify, keep and save harmless and defend the City are apart from and not limited by the Design-Builder's duties under this Agreement, including the insurance requirements set forth in the Agreement.
- (h) No Personal Liability of Public Officials or Employees. No official, employee or agent of the City shall be charged personally by the Design-Builder, or by any Subcontractor or assignee of the Design-Builder, with any liability or expenses of defense, or be held personally liable to them under any term or provision of this Agreement, or because of the City's execution or attempted execution of the Agreement, or because of any breach of the Agreement.

5.18. Insurance Maintained by Design-Builder

Design-Builder must provide and maintain at Design-Builder's own expense, until Contract completion and during the time period following final completion if Design-Builder is required to return and perform any additional work, services, or operations, the insurance coverages and requirements set forth in Exhibit E of this Contract, insuring all work, services, or operations related to the Contract.

5.19. Evidence of Insurance

- a) The Design-Builder must furnish the City, CDA, 10510 West Zemke Road, 60666, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring

during the term of this Contract. Non-fulfillment of the insurance conditions may constitute a violation of the Contract, and the City retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

- b) Contractor must furnish Certificates Insurance of Coverage of any or all insurance policies listing the City as an additional insured upon request by the City. All insurance certificates must be signed, dated and reference the City contract number.

5.20. Payment and Performance Bond

Within five (5) days of the City's execution of this Agreement, Design-Builder shall furnish to the City a payment and performance bond (the "Bond") in substantially the same form as specimen form of bond furnished in Exhibit E to this Agreement. The Bond shall be issued by a surety that is (i) admitted in the State of Illinois and (ii) is approved by the City. The penal sum of the Bond shall be 100% of the Contract Sum which shall be furnished to the City upon execution of the Agreement. Any increase in the Contract Sum that exceeds 10% in the aggregate shall require a rider to the Bond increasing penal sums accordingly. The Design-Builder shall keep its surety advised of any changes that may impact the Contract Sum and/or Project Schedule. Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the original Agreement.

Any modification increasing or decreasing the Contract Sum shall include and Design-Builder shall be reimbursed for additional cost to be incurred for the Bond or the City shall be credited for the reduction in costs for the Bond.

5.21. Acceptances of Work.

5.21.1. Substantial Completion of the Milestones, Phases and Project

- (a) The Design-Builder will notify the CDA, in writing, of a date that the work on a milestone, phase, or the Project as a whole will be ready for inspection by the Commissioner and Authorized City Representative, to determine whether the Work is Substantially Complete. Notice will be given by the Design-Builder at least seven (7) days in advance of that date. If the CDA concurs that the work will be ready for inspection and/or testing on the date stated, including all testing and balancing, commissioning, operational training and other activities and may be required by the City, the Commissioner, CDA, and other parties, selected by the Commissioner, will make such inspection within a reasonable period of time. The scheduling of the inspection will not relieve the Design-Builder of its responsibilities under the Contract Documents. The Design-Builder is required to furnish access to all parts of the Project for the inspection.
- (b) Upon inspection, the Design-Builder will prepare a Certificate of Substantial Completion for execution by the Architect and the CDA. The Commissioner will determine whether Substantial Completion has been achieved and will issue a written notice to the Design-Builder of its acceptance of the Certificate of Substantial Completion for the Project.

5.21.2. Final Completion and Acceptance of the Work

- (a) Punch List Completion

1. The Design-Builder understands and agrees that TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Design-Builder from the City. The Design-Builder agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
 2. Unless otherwise directed by the Authorized City Representative, failure of the Design-Builder or its Subcontractors to begin the Punch List Work within 3 business Days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
 3. It is further understood and agreed that the Punch List Work will be continuously prosecuted once begun. Therefore, any gap of three (3) Days during which Punch List Work is not being performed on the job site will also be construed as failure to prosecute the Work of the Contract.
 4. Punch List Work will be continuously prosecuted once begun and completed within the period set forth in the Punch List by the Authorized City Representative. The Authorized City Representative shall establish the period for completion of the Punch List Work after consultation with the Design-Builder, but in no event shall such period exceed 90 days. The time period for completion of the Punch List Work begins the day after the Punch List is provided to the Design-Builder. The Authorized City Representative may extend the period to complete Punch List Work for specific Work which requires the receipt of long lead-time materials. The period established by the Authorized City Representative will be based on the Authorized City Representative's reasonable, good faith estimate of the time necessary for the Design-Builder to complete the Punch List Work.
 - i. When the Design-Builder deems the Work, including all Punch List Work, to be complete, the Design-Builder must notify the Authorized City Representative in writing that the Work will be ready for an inspection and/or test on a date specified by the Design-Builder. Such notice is to be given at least 5 Days in advance of said date. If the Authorized City Representative concurs that the Work will be ready for inspection or testing on the date given, including submission of start-up reports, testing and balancing reports, instructions, warranties, Operations & Maintenance manuals, completion of all Punch List work and other work as may be required by the City, the City will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve the Design-Builder of its responsibilities under the Contract Documents. The Design-Builder must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the City will determine if Final Completion and Acceptance of the Work has been achieved and will issue a written notice to the Design-Builder confirming the Final Completion and Acceptance of the Work.
- (b) No action of the City, the Authorized City Representative, or their respective Commissioners, board members, officers, employees, or agents is to be construed as accepting Work done or material furnished in the performance of this Agreement, which Work or materials are not in accordance with those specified and required by the Contract Documents. The issuance of notice of Final Completion and Acceptance or the final payment does not affect the rights of the City against the Design-Builder (and the surety or sureties on the Performance and Payment Bond given by the Design-Builder) to enforce the complete performance of the Contract Documents or to sue for the

recovery of damages for failure to do so, nor affect the terms of Design-Builder's guarantee in connection therewith.

5.21.3. Guarantees and Warranties.

- (a) Design-Builder hereby warrants to the City that all materials and equipment furnished under the Contract Documents shall be new and of recent manufacture unless otherwise specified, and that the Work shall be of excellent quality and free from defects and deficiencies (including, but not limited to, failure of the Work to conform to the Contract Documents as to kind, quality, function of equipment, and characteristics of material and workmanship) (collectively, "Warranty"). Design-Builder agrees that it shall remedy and correct any and all Work that fails to comply with this Warranty ("Defective Work"). The Design-Builder will provide this guarantee to the City in writing using Exhibit H or such other form the Design-Builder may propose and the City may approve.
- (b) Defective Work shall include, but not be limited to, any defect, fault, or damage in such Work, material, or equipment, or in the Project, or in any part thereof so furnished by, through, or under Design-Builder or any Subcontractor. Design-Builder shall bear at its sole cost all costs that may be incurred to replace, repair or correct Defective Work, including, but not limited to, any costs incurred by the City, if any, for additional services, professional services, administrative services, and work required as a result of the rejection or correction of the Defective Work.
- (c) Manufacturer's Warranties. The Design-Builder will (i) ensure that all required manufacturers' warranties are assignable, and assigned, to the City, and (ii) submit all applicable manufacturers' warranties to the Authorized City Representative and ensure that all warranty forms have been completed in the City's name and registered with the appropriate manufacturers. Repairs and replacements made by the Design-Builder pursuant to this Section will include a Manufacturer's Warranty, if standard with the Manufacturer or required by the Contract Documents, in addition to the Design-Builder's Warranty.
- (d) Correction Period. If, within one (1) year after Substantial Completion of all of the Work or any designated portion thereof as determined by the City, or within such longer period of time established by applicable laws, any of the Work is found to be Defective Work, then Design-Builder shall correct it promptly after receiving a written notice from the City to do so. This obligation shall survive Final Completion and/or termination of the Agreement, and the obligation shall not limit or impair any other warranties given in or required by the Contract Documents. If the City discovers the defect or learns of it from another entity, then the City shall furnish such notice promptly after discovering or learning of the defect or nonconformance. Any corrective work performed by Design-Builder shall likewise be subject to a one-year correction period which shall be renewed and recommence on substantial completion of such corrective work.
- (e) Commencing and Completing Repair. Design-Builder, within a reasonable time after receipt of written notice thereof, but in no event later than forty-eight (48) hours after receipt of such notice, shall commence to correct, repair, and make good any Defective Work that may develop within the period said materials, equipment, and workmanship are warranted, and also make good any damage to other Work caused by the repair of such defects. Within seven (7) days from receipt of written notice from the City concerning Defective Work, Design-Builder must notify the City of the amount of time it will take Design-Builder to complete Design-Builder's correction or repair of the specified Defective Work. Any such correction or repair shall be completed within fourteen (14)

days following receipt of written notice from the City, unless such correction or repair is inherently incapable of being completed within fourteen (14) days, in which event Design-Builder shall pursue diligently the correction or repair until it is complete. No work performed to correct, nor the materials, labor, or resources required to perform the correction, of such defects shall be the basis of any claim upon the City for additional compensation or damages. Should the Design-Builder fail to proceed in accordance with the above, the City, without further notice to the Design-Builder, may furnish all labor and material necessary for repairs, or removals and replacements, and the Design-Builder shall pay the City all such costs incurred or the City, at its discretion, may back-charge the Design-Builder for all such costs.

- (f) Correction Period Time Period. Nothing included in this Section shall establish a period of limitation for any other warranty or obligation that Design-Builder might have pursuant to the Contract Documents. The establishment of the time period of one (1) year after the Date of Substantial Completion of the entire Work or portion thereof or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents applies only to the particular obligation of Design-Builder to correct the Work. Other than specifically to correct Defective Work, such time period has no relationship to the time within which any other obligation or warranty of Design-Builder under the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish Design-Builder's liability with respect to such obligations or warranties.

5.22. Design Builder Warranties and Representations

Design-Builder warrants and represents that:

- (a) It has carefully examined and analyzed the provisions and requirements of this Contract; it has inspected the Site to the extent made available by the City; from its own analysis it has satisfied itself as to the nature and scope of Work, all conditions, any obstructions, and requirements needed for the preparation of the Contract Sum and the performance of its Contract, the general and local conditions, and all other matters which in any way may affect this Agreement or its performance; and the time available for such examination, analysis, inspection, and investigation was adequate.
- (b) This Agreement is feasible of performance in accordance with all of its provisions and requirements and that the Design-Builder can and must perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract.
- (c) Except for the contents of this Agreement, no representation, statement or promise, oral or written, or of any kind whatsoever, by the City, its officials, agents, representatives or employees, has induced the Design-Builder to respond to the RFQ or has been relied upon by the Design-Builder, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at or on the Site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of the Agreement; or (vi) any other matter.

- (d) Neither the Design-Builder nor any affiliate of the Design-Builder is listed on any of the following lists maintained by the Office Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph only, the term “affiliate,” when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

5.23. Multi Project Labor Agreement (PLA)

The City has entered into the PLA with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the City’s website at:

<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-ProjectLaborAgreement-PLAandSignatoryUnions.pdf>.

To the extent that this Contract involves a project that is subject to the PLA, Design-Builder acknowledges familiarity with the requirements of the PLA and its applicability to any Work under this Contract, and shall comply in all respects with the PLA.

ARTICLE 6. RIGHTS AND OBLIGATIONS OF THE CITY

6.1. Payment for Services

6.1.1.Payment Applications. The City will promptly pay the Design-Builder for Services performed in accordance with the terms and conditions of this Agreement. It is the duty of the Design-Builder to effectively manage the payment application process and all related paperwork. The Design-Builder is responsible to the City for securing and delivering all paperwork required by the Agreement to be submitted with payment applications, including Subcontractor, consultant and material supplier lien waivers, certified payrolls, and all other required documents. Repeated failure of the Design-Builder to promptly submit its payment applications to the City, in proper and complete form, will constitute a material breach of this Agreement, and constitute cause for termination. Design-Builder will submit payment applications in such a manner so as not to delay payment to any Subcontractor, material supplier, consultant or service provider whose billing and lien waiver paperwork is complete. All required certified payrolls, trailing lien waivers, and other required paperwork must be submitted with the payment application. Design-Builder’s payment application will not include any request for payment for work of any Subcontractor, material supplier, consultant, or service provider whose certified payrolls, trailing lien waivers, or other payment paperwork is incomplete at the time the payment application is submitted.

6.1.2.Schedule of Values. The Design-Builder shall submit to the CDA, for the City’s approval, a Schedule of Values showing values of the Work to be performed by Subcontractors for the various components of the contract, and shall include Design-Builder’s overhead and profit, insurance and

bonds. The Schedule of Values shall be a further refinement of the Price Breakdown provided in the Fixed Price Proposal. Each bid item of the Price Breakdown shall be divided into measurable/deliverable "activities," with each activity number the same as used for the CPM schedule resulting in a form of price-loaded CPM schedule. For each bid sub-item number and title, the same quantity, unit price and sub-item price from the Price Breakdown shall be included along with a breakdown of its specific activities. Then for each activity number, a description of the activity, quantity and units, unit prices and a specific scheduled value for the activity shall be provided. Measurable/deliverable activities shall be defined for each and every item of Work to be submitted (i.e., each CDRL, each specific delivery of equipment and material to the Work Site to coincide with the expected packing list, specific sections of construction and/or installation, tests, Project management/administration, and engineering).

When the Schedule of Values is time programmed in accordance with the CPM schedule the resultant cash flow, as well as the actual accumulation of payments, shall not exceed the proposed Cash Flow Schedule submitted by the Design-Builder in its Proposal. All Design-Builder invoices shall be for completed Work in accordance with the Schedule of Values, with payment subject to acceptance. During the first 120 days of the Contract, the preliminary Schedule of Values submitted in the Proposal shall be the basis for Design-Builder invoicing and payment, or until the Commissioner accepts the interim Schedule of Values (see below).

Within 60 days after Notice to Proceed (NTP), the Design-Builder shall submit for the Commissioner's review and acceptance, a draft interim Schedule of Values, that shall cover all detailed Work for the period from NTP up to and including the completion of all Final Design Reviews and preliminary updated values for the Work for the remainder of the Contract period.

Within 30 days after the Commissioner's review of the draft interim Schedule of Values, the Design-Builder shall submit the interim Schedule of Values for the Commissioner's review and acceptance, that shall become the interim basis for Design-Builder invoicing and payments.

Within 30 days after the completion of all Final Design Reviews, the Design-Builder shall submit, for the Commissioner's review and acceptance, the final Schedule of Values that shall include qualified and quantified bills of materials for all deliveries of equipment and materials and quantified descriptions of all construction, installation and testing based upon the final design of the System. With each version of the Schedule of Values, the Design-Builder shall submit a revised Cash Flow Chart to ensure that the Schedule of Values will not result in exceeding the Cash Flow Schedule, submitted by the Design-Builder in its Proposal.

6.1.3.Payment Application Target Date. The City will assign a payment application target date to the Design-Builder. Not later than ten (10) Days prior to the payment application target date, the Design-Builder will submit to the CDA a pencil copy of the application for payment for Work completed through the end of the current month and the monthly progress report in the form set forth in Exhibit I attached hereto. Not later than five (5) Days prior to the payment application target date, the pencil copy will be reviewed for approval of value of the Work completed at the payment review meeting with the CDA and the Authorized City Representative. Calculation of the value of Work completed will be made by summarizing the individual values of Work completed as such completion is reported in the monthly progress report reviewed by the Authorized City Representative for the approval of the City. Submission of the monthly progress report five (5) Days prior to the payment review meeting will be a condition precedent to the approval of the

payment application. The pencil copy of the Payment Application will project completion of Work through the end of the current month.

- 6.1.4. Sworn Statement. On the payment application target date of each month, the Design-Builder will submit to the CDA and the Authorized City Representative, in triplicate, an application for partial payment including a notarized affidavit stating that all monetary obligations to all Subcontractors for the periods covered by all prior applications for payment for which payment has been made by the City, if any, have been completely fulfilled and discharged. The affidavit must be supported by receipts or receipted vouchers. Design-Builder shall submit form of waiver of lien for partial or progress payment to the City for approval. The application for partial payment will conform to approvals made by the Authorized City Representative at the payment review meeting.
- 6.1.5. MBE/WBE Utilization Report. A status report of MBE/WBE subcontractor payments must be submitted with each monthly Payment Estimate in the form required by the City. The submittal of the MBE/WBE Utilization report is in addition to the electronic reporting of MBE/WBE payments in the Certification and Compliance (C2) system required by the Department of Procurement Services (DPS).
- 6.1.6. Subcontractor Payment Certification. The Design-Builder must submit a Subcontractor Payment Certification in a form approved by the City. The certification must list the estimated amount to be paid to each Subcontractor, supplier and the Design-Builder for the Payment Estimate period. The information provided in the certificate may be posted by the City on the City's website. Vendor numbers must be shown for all companies listed.
- 6.1.7. Certified Payrolls. Three copies of certified payrolls for the payment period are to be submitted by the Design-Builder and all Subcontractors working on the Site to the City or its designated representative every week. The City may elect to utilize a Web-based method for electronic submittal of certified payrolls. In the event that the City elects to utilize electronic submittal, Design-Builder shall follow the directions provided by the City, and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. All payrolls must be identified with Design-Builder or Subcontractor's name and Agreement name and number, and must be sequentially numbered. The payroll will be submitted by the Design-Builder and Subcontractor until all Work by the Design-Builder or Subcontractor is completed. If there are periods of no Work by Design-Builder or a Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be 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 City. An employee's address should appear every time his/her name appears on the payroll. The Design-Builder 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 City. The EEO report form required by the City and the U.S. Department of Labor must be submitted by Design-Builder and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request. Design-Builder may be required to submit data electronically or online in accordance with the City's LCP Tracker System.

Schedule Requirement: The Contractor must satisfy all requirements and submissions as described in the Technical Provisions

6.1.8. Mechanics' Lien Waivers. In addition to the documentation identified above in this section, Design-Builder shall provide the following lien waivers as part of its submitted Payment Application:

- (a) For the first Payment Application, the Design-Builder must provide its own Sworn Statement and its own partial lien waivers in support of the Payment Application.
- (b) For the second Payment Application, and all subsequent Payment Applications, the Design-Builder must provide: its own Sworn Statement, its own partial lien waivers for the current Payment Application and partial lien waivers from all Subcontractors for the prior Payment Application.
- (c) For the final Payment Application all lien waivers of the Design-Builder and its Subcontractors must be "final" waivers.
- (d) Prior to final payment and Final Completion and Acceptance of the Work, the Design-Builder must comply with the requirements of this Article. Unless a written extension is granted by the City, the Design-Builder must submit the final payment application and waivers consistent with the timeframe set forth in this Article. The Design-Builder's failure to do so within the required time period is an Event of Default.

6.1.9. Deductions for Uncorrected Work. The City reserves the right, in its sole discretion, to deduct the cost of damaged or non-conforming Work from the Contract Sum rather than require Design-Builder to repair or replace such damaged or non-conforming Work, but only in the event Design-Builder has failed to correct the non-conforming Work after receiving reasonable notice from the City that the City will correct the non-conforming Work, and Design-Builder has failed to commence correcting such non-conforming Work promptly upon receipt of such notice from the City.

6.1.10. Certificates for Payment. If the Design-Builder has complied with the requirements of this Article, the Authorized City Representative or the City will issue to the Design-Builder a certificate for such amount as the Authorized City Representative determines to be properly due as agreed upon during the payment review meeting during the preceding payment period. The amount of each partial payment will be the total sum of completed Work (including bonds, insurance and fees) less prior partial payments, and payments withheld in accordance with the provisions of this Article. No certificate issued for payment, nor payment to the Design-Builder, nor partial or entire use of the Work, will be an acceptance of any Work or materials not in accordance with the Contract Documents. Any certificates for payment are for the benefit of the City and will not be relied upon by any other party (including any surety or Subcontractor of the Design-Builder) in any action against the City, or anyone acting on behalf of either of them. The Sworn Statement, in the form designated by the City and Section 5.01(d) above, must list the amount earned by each Subcontractor, supplier and the Design-Builder during the period covered by the Payment Application and include the following:

- (a) the name and business address of the particular Subcontractor or supplier;
- (b) description of the Work performed and/or product supplied;
- (c) indication that the Subcontractor or supplier is a MBE/WBE, or a non-certified firm;
- (d) the total amount of the particular subcontract;

- (e) the amount previously paid to the Subcontractor and the dates paid;
- (f) the amount of the Payment Application that the Design-Builder will pay to each individual Subcontractor and/or supplier from payments Design-Builder receives on the request;
- (g) the balance remaining under the subcontract to complete the Work.
- (h) Invoices for Subcontractors. The Design-Builder must submit invoices to support the request for payment for all subcontractors.

6.1.11. Payment for Stored Material.

1. Payment for Stored Material on the project site will be one hundred percent (100%) of a valid invoice when the Design-Builder has complied with the following requirements and has:
 - a. Provided a paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.
 - b. Provided an unconditional waiver of lien from the supplier for the total amount of the material purchased.
 - c. Provided inspection tickets for all the material stored.
 - d. Material invoices should reference the applicable Contract line item for each item of material.
2. Payment for material stored off-site, when approved in writing by the Commissioner and Chief Procurement Officer, will be one hundred percent (100%) of a valid invoice when the Design-Builder has provided documentation and complied with the requirements listed below.
 - a. Provided a paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.
 - b. Provided a signed unconditional waiver of lien from the supplier for the total amount of the material purchased.
 - c. Provided inspection tickets for all the material stored.
 - d. Provided a Design-Builder-certified statement giving the exact location of the materials or equipment, and stating that:
 - (1) such materials are segregated, identified as City property, suitably stored and maintained at a bonded, secure and environmentally appropriate location agreed upon and subject to such conditions required or established by the Commissioner.
 - (2) the Design-Builder has complied with procedures satisfactory to the Commissioner to establish the City's title to such materials and must otherwise protect the City's interest therein, including but not limited to, insurance, storage and transportation to the Project Site for such materials stored off-site, as the Commissioner may reasonably require.
 - (3) the materials, equipment and associated fabricated components will not be diverted away from the Project.
 - e. The risk of loss will remain with the Design-Builder. The Design-Builder must provide the Authorized City Representative with a certificate of insurance coverage for the stored material upon which payment is requested.
 - f. Simultaneously with payment for such material, and in addition to the Design-Builder's certification required by paragraph 2.d(2) above, the Design-Builder must prepare, execute and deliver any and all documents required to transfer title to the City, including without

limitation, any Uniform Commercial Code Documentation necessary to perfect transfer of title. However, nothing in this Article is intended or shall be construed to modify and/or accelerate the date on which any warranty of the materials is to commence as may elsewhere be specified by the Contract Documents.

- g. All material and Work covered by payments made will thereupon become the sole property of the City; however the risk of loss will remain with the Design-Builder until Substantial Completion.
- h. The Design-Builder must pay the CDA's reasonable costs for consultants or attorneys relating to administration of the payment for material stored off site, to verify and review required filings and documents, inspect materials, and travel. Travel costs are to be paid based upon the current City Travel Guidelines.

6.1.12. Payments Withheld. No payment shall be made to the Design-Builder until certificates of insurance, the Bond, or other evidence of compliance by the Design-Builder with all the requirements of the Agreement for insurance and bonds have been provided to the City. Further, no payments on the basis of Work performed by a Subcontractor shall be paid until copies of all bonds required and any certificates of insurance required of the Subcontractors by the Agreement have been filed with the City. The Authorized City Representative may decline processing a Payment Application if, in the Commissioner's opinion, the Payment Application is not adequately supported. If the Design-Builder and Authorized City Representative cannot agree on a revised amount, the Authorized City Representative will process the Payment Application in the amount the Commissioner deems appropriate. The Authorized City Representative may decline to process any Payment Application or may rescind in whole or in part any approval previously made to such extent as may be necessary in his/her opinion because of any failure of the Design-Builder to perform any obligation under the Agreement, including but not limited to:

- (a) The Design-Builder's failure or refusal to provide the Authorized City Representative and CDA with the required Project Schedule for the Work or monthly schedule updates and obtain the Authorized City Representative's acceptance for either as required by the Agreement.
- (b) The Design-Builder's failure to remedy defective Work following written notice from the City.
- (c) The Design-Builder's failure to make payments due to Subcontractors, employees, or material suppliers or for labor, materials or equipment, or provide partial lien waivers with Payment Applications.
- (d) The Design-Builder's persistent failure to maintain progress of the Work in accordance with the Project Schedule, or failure to carry out the Work in accordance with the Agreement as determined by the City.
- (e) The Design-Builder's refusal to follow City, state, federal, or Contract safety and security requirements.
- (f) The Design-Builder's failure to provide a plan to meet the requirements of the Chicago Residency Ordinance.

The City's rights under this section are cumulative to any other rights provided under the Agreement.

6.1.13. Payment at Substantial Completion and Final Completion.

- (a) At Project Substantial Completion. When the Project is Substantially Completed, the Design-Builder must notify the Authorized City Representative, in writing, that the Project

will be ready for inspection and/or testing on a definite date. Such notice must be given at least seven (7) calendar days in advance of said date. If the Authorized City Representative concurs that the Project will be ready for inspection and/or testing on the date given, the Commissioner and other parties will make such inspection as is convenient for all parties, but within a reasonable period of time. The scheduling of the inspection to determine whether the Project is Substantially Complete shall not relieve the Design-Builder of its responsibilities under the Agreement. The Design-Builder is required to furnish access for the inspection. If the Commissioner finds that the Work is acceptable under the Agreement and has been fully and satisfactorily performed on a timely basis, and the Design-Builder has furnished: a) MBE/WBE final lien waivers, MBE/WBE conditional final lien waivers, or an affidavit of the MBE/WBE stating the final amount earned; b) complete certified payrolls; c) documentation of the turnover of "as-built" drawings, record shop drawings, and product data; d) spare stock of materials, spare parts, accessories, special tools, O & M manuals, guarantees, warranties; e) and all other items required by the Contract Documents or the Authorized City Representative, the City shall release payment to the Design-Builder for substantial completion of the Work which shall not include payment for the Final Closeout Line-Item in the Schedule of Values, as such term is defined below, which shall be paid upon Final Completion.

(b) At Project Final Completion. All remaining amounts in the Contract Sum will be paid in accordance with this Agreement, when all remaining Work and punch list Work is complete and the Design-Builder submits to the Authorized City Representative a sworn affidavit that states the following:

- i. All payrolls, bills 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.
- ii. The "Design-Builder's Sworn Statement and Affidavit" for final release of payment has been provided to the Authorized City Representative.
- iii. All claims made by Subcontractors of any tier, suppliers, and others against the Design-Builder, the City, any agents of the City, the Commissioner or Authorized City Representative have been resolved.
- iv. "Final Waiver of Lien and Design-Builder's Affidavit" forms for all Subcontractors of any tier have been provided to the Authorized City Representative.
- v. All warranties and guarantees required by the Agreement have been provided to the Authorized City Representative.
- vi. All warranties and guarantees are in full force and effect.
- vii. Design-Builder has provided manufacturers' operating instructions for all equipment, and furnished proof that appropriate training of City personnel has been completed.
- viii. The surety's written consent, signed by its authorized representative, for final payment to be made directly to the Design-Builder, has been provided to the Authorized City Representative.
- ix. The Design-Builder agrees that acceptance of final payment will constitute a general release to the City, its representatives, officials and employees of all claims of liability for anything done or furnished or relating to the Work and Services required by the Agreement or for any act or neglect of the City or its agents, officials and employees relating to or connected with the Agreement.

- x. As-built documentation including but not limited to as-built drawings, as-built shop drawings and operation and maintenance manuals have been provided to the Authorized City Representative.
 - xi. All other documents requested by the Authorized City Representative have been provided and Design-Builder has completed the Work subject to the Final Close-Out Line Item.
 - xii. The Design-Builder must remove all of the Design-Builder's trailers, equipment, leftover materials, and trash from the Project site, staging area(s) or anywhere else on the Project Site. The Design-Builder must also restore the Design-Builder's staging area(s) to its pre-construction condition. If the Design-Builder does not comply with this requirement, the Authorized City Representative may provide written notice to comply within a period of time determined by the Authorized City Representative. If the Design-Builder fails to comply with the written notice, the Authorized City Representative may have the work done by others, and deduct the charge from the Design-Builder's final payment.
- (c) Notwithstanding the foregoing, the Authorized City Representative, in his sole discretion, may decline to release all or a portion of the final payment if the Authorized City Representative considers the Design-Builder's performance or the progress of the Work to be such that the City has incurred or will likely incur damages greater than the amount due Design-Builder, including but not limited to liquidated damages. Further, any failure by Design-Builder to meet the final completion requirements set forth above, shall be deemed an Event of Default.
- (d) Final Close-Out Line Item. The Schedule of Values shall include a line-item entitled "Final Close-Out" which shall allocate an amount of the Contract Sum for costs to complete the requirements of Final Completion set forth in the Contract Documents.

6.1.14. Payments Subject to Review. The City shall not be precluded or estopped by any measurement, estimate, or certificate made by Design-Builder or any Subcontractor either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by the Design-Builder, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Agreement. The City will not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Design-Builder and its sureties such damages as the City may sustain by reason of the Design-Builder's failure to comply with the terms of the Agreement.

6.1.15. Salaries/Wages. Salaries of all employees of the Design-Builder performing Services or Work will be paid unconditionally and not less often than once a month without deduction or rebate on any account, except for payroll deductions as may be required by law. If there is any underpayment of salaries by the Design-Builder, the City may withhold, out of payments due to the Design-Builder, an amount sufficient to pay to employees the difference between the salaries required to be paid and the salaries actually paid such employees for the total number of hours worked.

6.1.16. No Waiver of Legal Rights. Neither the acceptance by the City, or any representative of the City, nor any payment for or acceptance by the City nor any extension of time, nor any possession taken by the City will operate as a waiver of any portion of the Agreement, or of any power herein reserved, or any right to damages herein provided. If the City elects to waive any breach of this Agreement, that waiver will not be held to be a waiver of any other or subsequent breach. Whenever under this Contract the City by a proper authority waives the Design-Builder's performance in any respect or waives a requirement or condition to either the City's or the Design-Builder's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and will not be deemed a waiver forever or for subsequent instance of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Contract regardless of the number of time the City may have waived the performance, requirement, or condition. The City will not be precluded or estopped from showing the true amount and character of the Work performed and materials furnished by Design-Builder, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform to the Contract Documents. The City will not be precluded or estopped from recovering from the Design-Builder and/or its sureties such damages as the City may sustain by reason of Design-Builder's failure to comply with the terms of the Agreement.

6.1.17. Liens. Whenever the City receives notice in writing of a lien or claim of money due from the Design-Builder to any Subcontractor, designer, consultant worker, or employee for Work performed or for materials or equipment furnished and used in or about the Work, the City may direct that the amount of such claim be deducted from payments due or to become due the Design-Builder and withheld by the City until such claim has been paid or otherwise discharged; provided, however that, to the extent permitted by law, the City shall not direct that the amount of such claim be deducted or withheld from payments due or to become due to Design-Builder if Design-Builder demonstrates that (i) all documentation required by the Agreement for payment of said amount to Subcontractor, worker or employee or for such materials and equipment furnished and used in or about the Work has been properly submitted to the City by Design-Builder, or (ii) Design-Builder has received the approval of the Circuit Court of Cook County to furnish a bond as security for the lien. This provision is to be construed as being solely for the benefit of the City, and will not require the City to determine or adjust any claims or disputes between the Design-Builder and its Subcontractors, workers, or employees, or to withhold any money for their protection, unless the City elects to do so. This provision is not to be construed as conferring any rights hereunder for the benefit of Subcontractors, workers or employees, or as enlarging or altering the application or effect of existing lien laws. The final payment will not become due until the Design-Builder delivers to the City complete release of all liens, financial obligations or claims from the Design-Builder, Subcontractors, and other agents acting on its behalf in connection with the Work, arising out of the Work, and an affidavit that so far as it has knowledge or information, the releases include all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, the Design-Builder must refund to the City all moneys that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

6.1.18. Additional Documentation. The City may, from time to time, require additional documentation to facilitate payment. Design-Builder will comply with any reasonable request for additional documentation.

6.2. Termination by the City

The City has the right, at any time, to terminate this Agreement in whole or in part, with or without cause, by written notice given to the Design-Builder at least thirty (30) days before the effective date of termination. So long as the Design-Builder is not in default under this Agreement at the time of termination, the City will pay the Design-Builder, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Design-Builder for periods up to the effective date of termination, which reimbursement may include such reasonable de-mobilization costs approved by the City. The City may exercise any right of set off regarding Design-Builder's failure to properly perform Services from payments that are due to Design-Builder.

6.3. Suspension by the City

- (a) The City has the right, at any time and from time to time, with or without cause, to suspend the performance of the Design-Builder hereunder with respect to all or any part of the Services, by written notice given to the Design-Builder at least five (5) days before the effective date of suspension. During the notice period the Design-Builder must wind down its Services. So long as the Design-Builder is not in default under this Agreement at the time of suspension, the City will pay the Design-Builder, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Design-Builder for periods up to the effective date of suspension.
- (b) During the period the Design-Builder's performance is suspended, the Design-Builder is not entitled to incur costs or fees, or bill the City, except for Design-Builder's time for participating in substantive meetings concerning the Project (but not for meetings to discuss Design-Builder's invoices or claims). The Design-Builder may invoice for such time spent during a suspension only if the Design-Builder's participation is requested by the City and only for the time of one individual per meeting. The City will pay for such time at the applicable hourly billing rate set forth in Exhibit G. Participation in meetings at the request of the City is not considered to be a resumption of the Design-Builder's Services.
- (c) If the Design-Builder is required to resume its Services under this Agreement, the City will notify Design-Builder in writing, giving Design-Builder a reasonable period (not to exceed 10 Days) to remobilize. The Design-Builder may invoice the City for its time spent on remobilization, which shall be invoiced at the hourly rates set forth in Exhibit G and for actual reimbursable expenses. The number of days during which the suspension period lasted, including any remobilization time, and such additional times as the parties may mutually agree is required, will be added to the Date of Substantial and Final Completion, and Design-Builder will re-commence its Services at the point they were suspended and may resume billing in accordance with the terms of the Agreement.
- (d) Termination or suspension of this Agreement in whole or in part does not relieve the Design-Builder from liability for its performance of any obligation under this Agreement that was performed or was to have been performed by the Design-Builder on or before the effective date of termination or suspension. In no event will the City be liable to the Design-Builder for any loss, cost or damage, including lost profits, which the Design-Builder or any other party may sustain by reason of the City terminating or suspending this Agreement as provided for in this Agreement.

6.4. Project Information

In connection with the administration of the Project by the City and the performance of the Agreement by the Design-Builder, the City has the following rights and obligations, in addition to those provided elsewhere in the Agreement:

- (a) Information. The City will provide the Design-Builder all information reasonably required concerning the City's requirements for the Project and the Services.
- (b) Tests and Reports. To the extent required for the Design-Builder to perform the Services, the City may furnish structural, civil, chemical, mechanical, results of test borings and pits for determining soil and subsoil conditions and/or other tests and reports or may authorize the Design-Builder to procure such tests and reports from a consultant or consultants approved in writing by the City.
- (c) Limitation on City's Obligations and Liability with Respect to City-Provided Information ("CPI"). Design-Builder may rely upon the CPI provided by the City as described in this section, provided, however, that the City expects the Design-Builder to review such CPI in detail and verify such CPI to the extent it may be reasonable and prudent for the Design-Builder to do so for the proper performance of the Services under this Agreement. The City makes no warranties and representations with respect to the accuracy of the information provided. Design-Builder must promptly report any errors, omissions, inconsistencies or ambiguities in the CPI it discovers in its role as Design-Builder, to the Authorized City Representative. In the event that Design-Builder believes that additional compensation and/or an adjustment to the Project Schedule is due to the Design-Builder from the City because of errors, omissions, inconsistencies or ambiguities in the CPI, the City will consider a request for additional compensation and/or time extension if, and only if, Design-Builder furnishes reasonable and appropriate evidence that Design-Builder has met its obligation to review and verify the CPI.

6.5. Ownership of the Project Documents

All drawings, specifications, documents, data, studies and reports prepared by the Design-Builder or any party engaged by the Design-Builder, pertaining to the Project and/or the Services, are and shall remain the property of the City. Design-Builder shall provide the City with the opportunity to review all such documents and shall provide copies to the City upon written request.

ARTICLE 7. COMPENSATION PROVISIONS

7.1. Payment

7.1.1. Basis of Payment

The City will pay Design-Builder according to the Schedule of Compensation in the attached Exhibit D for the completion of the Services in accordance with this Agreement.

7.1.2. Method of Payment

Design-Builder must submit monthly invoices to the City for costs billed, as outlined in the Schedule of Compensation in Exhibit D. The invoices must be in such detail as the City requests. The City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

7.2. Ordering, Invoices, and Payment

7.2.1. Funding

The source of funds for payments under this Contract is Fund number_____. Payments under this Agreement must not exceed \$_____ without a written change in accordance with the provisions herein. Funding for this Contract is subject to the availability of funds and their appropriation by the City Council of the City.

7.2.2.Electronic Payment

Design-Builder may be paid, at the City's option, by electronic payment method. If the City elects to make payment through this method, it will so notify the Design-Builder, and Design-Builder agrees to cooperate to facilitate such payments by executing the City's electronic funds transfer form, available for download from the City's website at:

http://www.cityofchicago.org/content/dam/city/depts/fin/supp_info/DirectDepositCityVendor.pdf.

The City reserves the right to offset mistaken or wrong payments against future payments.

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

7.2.3.City Right to Offset

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

7.2.4.Records

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

7.3. Audits

7.3.1.City's Right to Conduct Audits

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

7.3.2.Recovery for Over-Billing

If, as a result of such an audit, it is determined that Design-Builder or any of its Subcontractors has overcharged the City in the audited period, the City will notify Design-Builder. Design-Builder must then

promptly reimburse the City for any amounts the City has paid Design-Builder due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows:

If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then the Design-Builder must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then Design-Builder must reimburse the City for the full cost of the audit and of each subsequent audit.

Failure of Design-Builder to reimburse the City in accordance with the foregoing is an event of default under this Contract, and Design-Builder will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

7.4. Subcontractor Payment Reports

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

Once the Design-Builder has reported payments made to each Subcontractor, including zero dollar amount payments, the Subcontractor will receive an email and/or fax notification requesting that they log into the system and confirm payments received.

All monthly confirmations must be reported on or before the twentieth (20th) day of each month. Design-Builder and Subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

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

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

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

If a Subcontractor has satisfactorily performed in accordance with the requirements of the Contract, Design-Builder must pay Subcontractor for such work, services, or materials within seven (7) calendar days of Design-Builder receiving payment from the City. Failure to comply with the foregoing will be deemed an event of default.

7.5. Prompt Payment to Subcontractors

7.5.1. Incorporation of Prompt Payment Language in Subcontracts

Design-Builder must state the requirements of these Prompt Payment provisions in all Subcontracts and purchase orders. If Design-Builder fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this section are deemed to be incorporated in all Subcontracts and purchase orders. Design-Builder and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Design-Builder's participation and that of its Subcontractors on this Contract.

7.5.2. Payment to Subcontractors Within Seven Days

The Design-Builder must make payment to its Subcontractors within 7 days of receipt of payment from the City for each invoice.

Provided the Subcontractor's performance has met the terms of the Contract Documents, and that Subcontractor has submitted its request for payment to the Design-Builder with such documentation as is reasonably necessary to substantiate such performance, the Design-Builder shall bill the City for such performance when the Design-Builder is first authorized under the payment schedule of the Contract to submit an invoice to the City for such performance. Design-Builder may only invoice the City at the rates contained in the Contract Documents.

7.5.2.1. Reporting Failures to Promptly Pay

The City posts payments to prime contractors on the web at:

<http://webapps.cityofchicago.org/VCSearchWeb/org/cityofchicago/vcsearch/controller/payments/begin.do?agencyId=city>.

If the Design-Builder, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within 7 days after receipt of payment under a City contract, the Design-Builder shall pay to its Subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 7-day period until fully paid.

In the event that a Design-Builder fails to make payment to a Subcontractor within the 7-day period required above, the Subcontractor may notify the City by submitting a report form that may be downloaded from the DPS website at:

[http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/StandardForms/Agreements/Failure to Promptly Pay Fillable Form 3 2013.pdf](http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/StandardForms/Agreements/Failure%20to%20Promptly%20Pay%20Fillable%20Form%203%202013.pdf)

The report will require the Subcontractor to affirm that (a) its invoice to the Design-Builder was included in the payment request submitted by the contractor to the City and (b) Subcontractor has not, at the time of the report, received payment from the contractor for that invoice. The report must reference the payment (voucher) number posted on-line by the City in the notice of the payment to the contractor.

Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the Municipal Code of Chicago, making false statements or claims to the City are violations of law and subject to a range of penalties including fines and debarment.

7.5.2.2. Whistleblower Protection

Design-Builder shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to this sub-section. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth herein, including termination. In addition to those remedies, any retaliatory action by a contractor may result in a contractor being deemed non-responsible for future City contracts or, if, in the sole judgment of the Chief Procurement Officer, such retaliatory action is egregious, the Chief Procurement Officer may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

7.5.3.Liquidated Damages for Failure to Promptly Pay

Much of the City's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the City. Inasmuch as the actual damages to the City due to such failure are uncertain in amount and difficult to prove, Design-Builder and City agree that the Chief Procurement Officer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the City for any and all damage incurred due to the failure of the Design-Builder to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the City shall be used to improve the administration and outreach efforts of the City's Small Business Program.

7.5.4.Action by the City

Upon receipt of a report of a failure to pay, the City will issue notice to the Design-Builder, and provide the Design-Builder with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in the Contract. The Chief Procurement Officer, in his or her sole judgment, shall determine whether any cause for nonpayment provided by a contractor is reasonable. In the event that the Design-Builder fails to demonstrate reasonable cause for failure to make payment, the City shall notify the Design-Builder that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report:	\$50
Second Unexcused Report:	\$100
Third Unexcused Report:	\$250
Fourth Unexcused Report:	\$500

7.5.5.Direct Payment to Subcontractors By City

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

Further, if such action is otherwise in the City's best interests, the CPO may (but is not obligated to) request that the Comptroller make direct payments to Subcontractors for monies earned on contracts and the effect will be the same, for purposes of payment to Design-Builder of the Contract Price, as if the City had paid Design-Builder directly. The City's election to exercise or not to exercise

its rights under this paragraph shall not in any way affect the liability of the Design-Builder or its sureties to the City or to any such Subcontractor, workman, or employee upon any bond given in connection with such Contract.

7.6. General Price Reduction – Automatic Eligibility for General Price Reductions

If at any time after the Bid Opening Date the Design-Builder makes a general reduction in the price of any goods, services or work covered by the Contract to its customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Contract for the duration of the contract period (or until the price is further reduced). Such price reduction will be effective at the same time and in the same manner as the reduction in the price to customers generally.

For purpose of this provision, a general price reduction will mean any reduction in the price of an article or service offered (1) to Design-Builder's customers generally, or (2) in the Design-Builder's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this Contract. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a general price reduction under this provision.

The Design-Builder must invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the General Price Reduction provision of the Contract. The Design-Builder, in addition, must within 10 calendar days of any general price reduction notify the CPO of such reduction by letter. Failure to do so will be an event of default. Upon receipt of any such notice of a general price reduction all participating Departments will be duly notified by the CPO.

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

ARTICLE 8. SHOP DRAWINGS, PRODUCT DATA, RECORDS, AND SAMPLES

8.1. Documents at the Site

The Design-Builder must keep one complete set of the Contract Documents, including all Drawings, specifications, and submittals, at the Site, in good order and available to the City, and the Authorized City Representative. The Drawings, specifications and submittals must be kept up to date by replacing obsolete sheets with revised sheets as they are issued.

8.1.1. Design-Builder's Responsibilities and Submittal Procedures

- (a) Shop drawings, product data, video tape and samples are part of the Work under this Contract and they must be provided whenever required to the satisfaction of the City at the expense of the Design-Builder.
- (b) The Design-Builder must submit to the Authorized City Representative such shop drawings, product data, video tape and samples required for the Work involved under this Contract.
- (c) Design-Builder must also submit a separate schedule (in table format), in addition to the Project Schedule, identifying all submittal dates to the Authorized City Representative for review and approval.

- (d) The Design-Builder must prepare and submit proper shop drawings, video tape, samples, and product data in accordance with its contractual obligations. By submitting shop drawings, video tape, product data, and samples, the Design-Builder represents that it has determined and verified all materials, field measurements, field conditions, and quantities and that it has checked and coordinated the information contained within each submittal, including its subcontractors' submittals, with the requirements of the Work and of the Contract Documents.
- (e) All shop drawings, video tape, product data, and samples must be dated and stamped by the Design-Builder and indicate that the submittal has been reviewed and checked by the Design-Builder prior to submittal and found to be in conformance with the Contract Documents. All submittals will be transmitted to the Authorized City Representative. The Design-Builder must clearly identify each shop drawing, video tape, product data, and sample in accordance with the following for purposes of identification and record:

<u>SUBMITTAL IDENTIFICATION</u>	
Name of Project:	_____
Contract Name and Number:	_____
Date of Submittal:	_____
Re-submittal Number:	_____
Identification of Deviations from Contract Documents:	_____
Specification Section, Page, and Paragraph No. and/or Drawing No.:	_____
Type of Material and Manufacture:	_____
Intended use:	_____
Applicable Standards such as ASTM numbers:	_____
CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATION	
Design-Builder:	_____
By: _____	Date: _____

- (f) 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. 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 prior to submission for review.
- (g) The Design-Builder must coordinate Submittals into logical groups or sets to facilitate review of related items.
- (h) The Design-Builder must not submit duplicates or reproductions of any Contract Documents issued by the City as shop drawings.
- (i) Design-Builder must provide each Submittal in the following quantities unless another number or method is specified elsewhere in the Contract Documents, or is required by the City:

- (j) Shop Drawings: Submit 1 reproducible and six (6) prints on sheets at a minimum of 30" by 42" in size. (Prints must be collated into sets).
- (k) Product data: Submit 6 copies of product data.
- (l) Samples: Submit 4 samples.
- (m) Video: Submit 1 digital video media.
- (n) Prior to submitting shop drawings, product data, video, or samples, the Design-Builder must notify the Authorized City Representative in writing of any deviations in the Submittal from the requirements of the Contract. If deviations from the Contract requirements are rejected by the OR or if evaluation of the deviations delays the progress of Work, Design-Builder will not receive a time extension for any delay caused by the deviations in the submittal.
- (o) Additional requirements for submittals are stated in the Technical Specifications.

8.1.2. Review of Submittals

Any review of Submittals by the Authorized City Representative does not relieve the Design-Builder, 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 Documents, nor does it relieve 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 Documents which may not be indicated on shop drawings when reviewed. The Design-Builder is solely responsible for any quantities that may be shown on the shop drawings.

8.1.3. Submission and Review of Samples. If a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials must be furnished by the Design-Builder to the Authorized City Representative to indicate the full range of such characteristics which will be present in the finished products. Any products delivered or erected without submittal and review of full range Samples will be subject to rejection. Each tag or sticker will have clear space for the stamps of the Design-Builder and its Architect. Notice of the result of the review will be provided to the Design-Builder with one of the stamps indicated in Paragraph 3 above. Rejected samples will be returned. Accepted samples will be retained by the City and become the property of the City. Where color samples are required to be submitted, color samples must be submitted on the actual material which will finally be installed in the Work.

8.2. As-Built Drawings

- (a) As the Work progresses, the Design-Builder, and the Subcontractor for each trade or division of Work under the direction of the Design-Builder, must keep a complete and accurate record of the following:
 - 1. Changes between the Work as shown on the Contract Drawings and the shop drawings indicating the Work as actually installed.

2. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements which were not accurately located or changed location or elevation from that shown on the Contract Drawings.
 3. Equipment schedules indicating manufacturers' names and model numbers installed.
- (a) Changes must be neatly and correctly recorded daily on full-size prints of the Contract Drawings. This record set of Contract Drawings must be kept at the Site for inspection by the City.
 - (b) Upon completion of the Work, the Design-Builder will submit a final set of full-size prints to the Authorized City Representative.
 - (c) At the time as-built drawings are delivered to the City, the Design-Builder and each Subcontractor will certify, in writing, that the as-built drawings are complete and accurate.

8.3. Record Shop Drawings and Product Data

- (a) As the Work progresses, the Design-Builder 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. The Design-Builder must furnish record shop drawings in a form and quantity acceptable to the City. Record shop drawings must be submitted for all items reviewed as shop drawings. Record shop drawings must be provided in an editable electronic medium and hard copy as directed by the City. Unless otherwise specified, record shop drawings must be submitted on the same size sheets as the Contract Document Drawings and include an index of all items.
- (b) Unless otherwise specified, Design-Builder must furnish seven (7) record copies of product data loose-leaf binders. Loose-leaf binders must be subdivided by submittal numbers and must contain an index of all items unless otherwise specified.

8.4. Instructions, Parts List, Operation and Maintenance Manuals, and Warranties

- (a) The Design-Builder must furnish a complete list of equipment actually installed. The list must include at least the following information: 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 the Design-Builder for the equipment under the guarantee.
- (b) The Design-Builder must submit operating instructions for each major component of equipment and its controls in accordance with the specifications. Proposed instructions must be submitted to the Authorized City Representative for the City's review and acceptance in the amount provided for in the specifications. Upon acceptance, the Design-Builder must post applicable instructions as required by the specifications or as otherwise directed by the City.
- (c) The Design-Builder must submit to the Authorized City Representative any and all maintenance data prepared by the manufacturer of each major component of equipment and its controls in accordance with the specifications. Data must include at least the following information: complete parts list; itemized lists of common purchase items of materials (e.g., bearing, 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; tolerance and clearances required for maintenance; and trouble-shooting guides prepared in a simple format to indicate complaint or problem, probable cause, and remedy. The proposed maintenance data must be submitted to the Authorized City

Representative for the City's review and acceptance in the quantity provided for in the specifications.

- (d) The Design-Builder must submit all applicable manufacturer's warranties as described in Paragraph 4.02(g) of the Agreement "Guarantees and Warranties."

8.5. Record Documents

Upon Substantial Completion of the Work, the Design-Builder must deliver to the City, in suitable transfer cases clearly marked "Record Documents," all as-built drawings, record shop drawings, video, product data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed. The submission of all Record Documents is a prerequisite to final payment.

8.6. Project Account Records

(a) Project data and records

1. The Design-Builder 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. Such record must be open at all reasonable hours to the inspection of the City and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Design-Builder also must furnish the City with certified copies of its payrolls in accordance with the provisions of this Agreement.
2. The Design-Builder and all Subcontractors must furnish the City with such information as the City 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 which the City may require. The Design-Builder must, on request, furnish the City with copies of delivery tickets and invoices covering the expenditures on the Contract.

(b) Audits

1. The Design-Builder must furnish to the Authorized City Representative such information as may be requested relative to the progress, execution, and cost of the Work. The Design-Builder must maintain complete records showing actual time devoted and costs incurred. The Design-Builder must maintain its 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 connection with the Work for seven (7) years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
2. All books and accounts kept by the Design-Builder in connection with the Work, whether in hard copy, digital or other electronic form, must be open to inspection and audit by authorized representatives of the City. The Design-Builder must make these records available at reasonable times during the performance of the Work and must retain them in a safe place and make them available for inspection and audit for at least seven (7) years after final payment. No provision in this Contract granting the City right of access to records documents is intended to impair, limit, or affect any right to access to such records and documents which the City would have had in the absence of such provisions.

3. The Design-Builder must reimburse the City for the costs of such audits if the audit demonstrates that the Design-Builder overstated the amount due on any invoice by 2% or more. This is in addition to the Design-Builder's obligation to reimburse the City for any overstated amount that might have been paid to Design-Builder.

ARTICLE 9. SCHEDULE.

9.1. Time of Performance

9.1.1. Time is of the Essence. TIME IS OF THE ESSENCE IN THIS CONTRACT. The Design-Builder agrees that it will commence the performance of the Work on the date issued in the City's Notice to Proceed and that it will achieve Substantial Completion of the Work no later than the Date of Substantial Completion set forth in the Project Schedule.

9.1.2. Commencement of the Services. The Design-Builder shall commence performance of the Services as provided in the Notice to Proceed (NTP).

9.1.3. Substantial Completion and Final Completion. The Date of Substantial Completion shall be _____ and the Date of Final Completion shall be as set forth herein. All punch list Work must be completed within 90 days after the Date of Substantial Completion or as otherwise required by the City in writing. The Date of Final Completion shall be no later than 90 days after the Date of Substantial Completion. All commissioning requirements shall be met prior to Substantial Completion.

9.1.4. Schedule of the Work. The Project Schedule shall be attached hereto as Exhibit C. The Project Schedule shall include, but not be limited to, (i) all milestone dates such as the Substantial Completion Date for Design Services; and the Dates of Substantial Completion and Final Completion of the Work; and (ii) all schedule requirements set forth in the Contract Documents.

9.1.5. Monitoring Progress and Costs. Design-Builder shall furnish monthly reports to the City showing the progress of the Work. The format, including the information to be included, of any and all such reports shall be in the form attached hereto as Exhibit I. At a minimum, such reports shall show actual progress of the Work as compared to the Project Schedule, and include estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

9.1.6. Submittals. Design-Builder shall submit all required project documentation through the City's web based document controls system chosen by the Authorized City Representative. Design-Builder shall familiarize itself with the business processes and document control protocols administered through the Authorized City Representative's web based document controls system chosen by the Authorized City Representative and avail itself of all necessary training provided by the Authorized City Representative to administer the Project.

9.2. Liquidated Damages for Delay

- (a) The Design-Builder acknowledges and agrees that if the Date of Substantial Completion is not achieved, the City will suffer damages for delay, including but not limited to, claims made by the airlines and tenants, loss of rents, loss of concession revenues and other revenue sources,

extended security, overhead, administrative and supervisory costs, and additional fees to separate contractors, consultants and design professionals. The City and Design-Builder recognize the difficulties involved in proving the actual loss suffered by the City in the event of Design-Builder's failure to achieve Substantial Completion of the Work within the Contract Time. Accordingly, instead of requiring any such proof, Design-Builder and the City agree that as liquidated damages for delay, but not as a penalty, Design-Builder shall pay the City the Liquidated Damages \$10,000 for each day that Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time. The parties agree that such amount reasonably approximates the actual damages that would be suffered by the City as a result of Design-Builder's failure to achieve Substantial Completion within the Contract Time. Upon the day Design-Builder achieves Substantial Completion of the Work, the Liquidated Damages shall no longer accrue.

- (b) Further, Night Construction in an active Runway Safety Area and Taxiway Object Free Area work to be accomplished between the hours of 10:00 PM and 6:00 AM unless noted otherwise in these contract documents and as approved by the Commissioner. Failure to restore active Runway Safety Areas and Taxiway Object Free Areas to full operational capability by 6:00 AM will result in assessment of Liquidated Damages as follows:

1. Runway Opening:

\$10,000.00 for the first 15 minutes (or increments of) beyond 6:00 AM
\$5,000.00 for every 15 minutes (or increments of) thereafter.

2. Taxiway Opening:

\$5,000.00 for the first 15 minutes (or increments of) beyond 6:00 AM
\$2,500.00 for every 15 minutes (or increments of) thereafter.

3. The official time will be determined by the Commissioner.

4. Night work Liquidated Damages are independent of Liquidated Damages by Phase.

- (c) The Design-Builder will be liable to an assessment of \$10,000 per each and every occurrence where an employee or piece of equipment is within the restricted zones or Taxiway or Runways without permission of the Commissioner. These assessments will be deducted from monies owed to the Design-Builder under this Contract. In addition, any fines levied by the FAA or the City due to improper conduct by the Design-Builder or its Subcontractors will be forwarded for payment to the Design-Builder.
- (d) The City may deduct Liquidated Damages that accumulate under this section from the Contract Sum and any payments then or thereafter due to the Design-Builder under this Agreement. Any such Liquidated Damages that the City does not deduct from payments due the Design-Builder shall be payable to the City within thirty days of the City's demand. If the City is unable to recover any portion of Liquidated Damages in accordance with the terms and conditions of this Section because any portion of this Section is found to be unenforceable or invalid as a penalty or otherwise, then, the City shall be entitled to recover from the Design-Builder all of the City's actual damages in connection with any failure by the Design-Builder to achieve Substantial Completion of the Work within the Contract Time including, without limitation, consequential damages.
- (e) These liquidated damages are for Design-Builder's delay only, and nothing contained in this Agreement limits the right of the City to recover from the Design-Builder any damages, costs

and expenses sustained by the City due to Design-Builder's other breaches in any other respect, including but not limited to damages arising out of Defective Work.

9.3. Design Builder's Construction Schedule.

9.3.1.General

- (a) Design-Builder shall submit a schedule for the Work to the City for review and acceptance in accordance with the requirements set forth herein and in the Contract Documents. The Design-Builder will, when necessary and when not subject to a Field Order, use overtime, multiple shifts, weekend, and/or holiday work to maintain the approved Contract Time without increase to the Contract Sum, but reimbursement may be allowed through the Design-Builder Contingency solely upon written approval of the City.
- (b) The City's approval of the Project Schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Design-Builder conform to the requirements of the Contract Documents. This approval does not relieve the Design-Builder of its sole responsibility for the means, methods, procedures, and sequence of the construction process, nor does it provide any entitlement to additional funds.

9.3.2.Completion Requirements

- (a) Upon receipt of the Project Schedule, the City will review the Project Schedule for conformance with the Contract Documents and degree of detail. Within 14 Days after receipt of the Project Schedule and supporting documents, the City will either (1) accept the Project Schedule, (2) accept the Project Schedule as noted or (3) reject the Project Schedule with the reasons set forth. If the Project Schedule either is given a qualified acceptance or is rejected, the Design-Builder must submit a revised Schedule within 7 Days.
- (b) Failure by the Design-Builder to provide a monthly updated Project Schedule shall be deemed an Event of Default.

9.3.3.Submittal, Acceptance, and Design-Builder's Responsibility for the Schedule

- (a) Prior to submitting the Project Schedule to the Authorized City Representative, the Design-Builder will review and verify the procurement lead time for the fabrication and delivery of all construction materials and equipment along with the erection and/or installation duration for all the construction activities that make up the critical path of the Project.
- (b) The Design-Builder will coordinate its letting of subcontracts, material purchases, shop drawing submissions, delivery of material, sequence of operations and approval of subcontracts to conform to the Project Schedule and will furnish proof of same as may be required by written notification from the City.

9.3.4.Updating

- (a) The Project Schedule will only be changed by a Field Order that extends the Contract Time. All updates will be plotted against the Project Schedule.
- (b) The Design-Builder will update the Schedule on a weekly basis and coincident with the submission of the monthly pay estimate and as otherwise required in Exhibit C

- (c) The Design-Builder will not make any changes to the original duration, activity relationships, constraints, costs, add or delete activities, or alter the Project Schedules logic when updating the Project Schedule.
- (d) The Design-Builder will submit scheduling documents in the same formats and number as indicated in the Contract Documents.
- (e) Upon receipt of the Project Schedule update, the Authorized City Representative will review for conformance with the Contract Documents and degree of detail. The Authorized City Representative, within 14 Days after receipt of the Project Schedule update and supporting documentation, will approve or reject it with written comments. If the Project Schedule update is rejected, the Design-Builder must submit a revised schedule update within 7 days after the date of rejection.
- (f) As part of the normal Project Schedule update, the Design-Builder will prepare a written narrative report, highlighting the progress during the past update period. The written narrative report will include the details set forth in Contract Documents.
- (g) The Design-Builder is required to attend a weekly Project Schedule update review meeting with the Authorized City Representative. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Design-Builder's narrative report will be reviewed at this meeting. The Design-Builder's representatives attending this meeting will have the authority to commit manpower and/or other resources to correct any negative impact to the Project Schedule.
- (h) Any possible means of shortening the Project Schedule at no additional cost must be brought to the attention of the City.
- (i) The updated Project 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.

9.3.5.Changes to the Schedule Proposed by Design-Builder

- (a) If the Design-Builder proposes to make any changes in the Project Schedule, Design-Builder will notify the Authorized City Representative in writing, stating the reasons for the change, identifying each changed activity (including duration and interrelationships between activities) and providing an electronic media of the proposed changed Schedule.
- (b) The City has the authority to accept or reject the proposed change in the Project Schedule and will do so in writing within 10 Days after receipt of the Design-Builder's submission. If the City approves the change in the Project Schedule that changed schedule will be designated the new "Project Schedule." All subsequent monthly updates will be plotted against the new "Project Schedule."

9.3.6.Recovery Schedule

- (a) The Design-Builder must maintain an adequate work force and the necessary materials, supplies and equipment to meet the Project Schedule. If the Design-Builder, is failing to meet the Project Schedule, as set forth in the Contract Documents, the Design-Builder, upon the written request of the Authorized City Representative, shall submit a recovery schedule.
- (b) The recovery schedule will set forth a plan to eliminate the schedule slippage (negative float) in accordance with the requirements of the Contract Documents. The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, working overtime, weekend work, employing multiple shifts, re-sequencing of the work. All costs associated with implementing the recovery schedule will be an allowable utilization of the Design-Builder Contingency or if exhausted, will be borne by the Design-Builder.

- (c) Upon receipt of the recovery schedule, the Authorized City Representative will review the recovery schedule for conformance with the Contract Documents and degree of detail in accordance with the Contract Documents.
- (d) If the Design-Builder refuses to follow the direction of the City, the City reserves the right, after serving 7 Days written notice to the Design-Builder, during which time Design-Builder fails to commence a cure, 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 the Design-Builder. The City's rights, excluding Liquidated Damages set forth in the Agreement, if any, under this provision are cumulative to rights under any other provisions of the Contract including the City's rights to terminate for default or convenience.

9.3.7. Schedule Changes Directed by the City

- (a) The Authorized City Representative may direct the Design-Builder to revise the Project Schedule. Reasons for such direction may include, but are not limited to, the following: (1) changes in the Work, (2) re-phasing of the Project or any phase, (3) a change in the duration of the Project or phase, and (4) acceleration of the Project or phase.
- (b) The Authorized City Representative will direct the Design-Builder to provide a revised Project Schedule in writing.
- (c) The Design-Builder will provide the revised Project Schedule with 10 Days of receipt of the City's written direction.
- (d) The City has the authority, in its sole discretion, to accept or reject the revised Project Schedule and will do so in writing within 10 days after receipt of the Design-Builder's submission. If the Authorized City Representative approves the revised Project Schedule, the City will initiate a Field Order, pursuant to which such revised Project Schedule will be designated the new "Project Schedule." Any revisions to the Contract Time necessitated by such agreed schedule changes shall be incorporated into the Contract Sum by Contract Modification if applicable.

9.4. **No Damages for Delay, Notices of Delay, Events of Delay, Delays Which Do Not Qualify for Time Extensions, Procedures for Time Extension Requests**

9.4.1. No Damages for Delays Beyond Design-Builder's Control

Should the critical path of the Work be delayed by any act of the City, including but not limited to a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the City, or by order of the Commissioner, or the Authorized City's Representative, or by any cause beyond the Design-Builder's control, or Force Majeure or exceptional weather events as defined by this Agreement, none of which are due to any fault, neglect, act or omission on Design-Builder's part, then the Design-Builder shall be entitled solely and exclusively to an extension of the Contract Time (collectively an "Excusable Delay"). The Design-Builder acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated or mitigated, by the Design-Builder, or (2) could not have been limited or avoided by the Design-Builder's timely notice to the City of the delay. Such extension of the Contract Time shall release and discharge the City, its employees and representatives from any and all claims for damages of whatever character, including but not limited to, disruption, changes in sequence, interference, inefficiency, field or home office costs claimed by the Design-Builder on account of the aforesaid or any other causes of delay.

9.4.2. Compensable Delays

This provision constitutes the sole exception to 9.4.1 “No Damages for Delays Beyond Design Builder’s Control.” In the event that the time for performance of the Work (as evidenced by a Field Order extending the Date of Substantial Completion) is extended by more than sixty (60) days as agreed due to changes or delays to the Work caused by the City or someone for whom the City is liable (a “Compensable Delay”), then the City will pay for the Design-Builder’s costs listed below, provided the delay or change was not caused wholly or partly due to any fault, negligent act, failure to act, error, omission, or breach of a material term of the Contract by the Design-Builder. The costs that will be paid are: extended field staff time for prosecution of the Work, labor inefficiency, wage rate escalation (for only that portion of time escalated wage rates have taken effect pursuant to recognized collective bargaining agreements), idle time for equipment (provided that Design-Builder proves that it took reasonable steps to mitigate damages regarding the idle equipment, relocation or storage of material (on or off site), winter protection costs and the cost of re-sequencing the work. Such payment is also contingent on: 1) the delay being caused by the actions of the City or someone for whom the City is liable and not some other cause, and 2) there having been no concurrent delay caused by the Design-Builder. Other than as set forth in this section, in no event shall the Design-Builder be entitled to any compensation or recovery of any damages, in connection with any Excusable Delay that is not a Compensable Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The City’s exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency of the City’s exercise of such rights or remedies, shall not be construed as a Compensable Delay.

9.4.3. Notice of Delay

In the event that Design-Builder’s performance of its Work is delayed by causes beyond the reasonable control of the Design-Builder, the Project Schedule, including phases and/or milestones, may be extended by the City to reflect the extent of such delay in an executed Field Order. The Design-Builder must give the Authorized City Representative written notice within five (5) business days of the commencement of such delay, except in the event of exceptional weather events which notice shall be governed by the section below. The written notice by the Design-Builder will comply with the requirements of Delays Beyond Design-Builder’s Control will only be made if the delay directly impacts critical path activities based on the Project Schedule in effect at the commencement of the delay.

9.4.4. Extensions of Time for Exceptional Weather Events

No additional time will be granted to the Design-Builder for weather delays associated with this Contract. All Work must be completed by the Date of Substantial Completion. However, weather events which are exceptionally irregular can be a basis for an extension in the Contract Time. An “Exceptional Weather Event” shall be defined as an event that prevents performance of one (1) or more critical path activities for eleven (11) or more consecutive planned workdays. Planned workdays shall be indicated on the weekly review schedule. The eleventh (11th) consecutive planned workday prevented from occurring by an Exceptional Weather Event shall be grounds for requesting a time extension for that day. In the event Design-Builder intends to designate a planned workday as part of an Exceptional Weather Event, Design-Builder shall notify the City immediately of such claimed designation, but in no event later than noon (12:00) of each day upon which an Exceptional Weather Event prevents Design-Builder’s performance of one more critical path activities.

9.4.5.Delays Which Do Not Qualify For Time Extensions

No extension of time will be granted under this section for any delay: (1) if the delay was caused by the action and/or inaction of the Design-Builder, including, but not limited to, the fault or negligence of the Design-Builder or its Subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of the Contract. The Commissioner's permitting the Design-Builder to proceed with its Work, or any part thereof, after such extension will in no way operate as a waiver of any other rights on the part of the City.

9.4.6.Procedure For Time Extension Requests

- (a) No time extensions will be allowed unless they are set forth in a Field Order which has been approved and executed by the City.
- (b) The Design-Builder expressly consents to both the time requirements and notice content requirements for requesting an extension of time set forth in this section. The Design-Builder acknowledges that the notice requirements set forth in this section shall be strictly enforced and agrees that any failure on the part of the Design-Builder to provide notice strictly in accordance with the requirements of this section shall constitute a waiver of the Design-Builder's right to seek an extension of time or to file a dispute in mediation or to the Commissioner under Article 12. The Design-Builder further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this section shall not be subject to or diminished by any claim on the part of the Design-Builder that the City or any person acting on behalf of the City had actual or constructive knowledge of any request for extension of time, entitlements to an extension of time or any facts or circumstances supporting an extension of time. The Design-Builder further acknowledges that the time requirements and content requirements of this section have the purpose, among others, of allowing the Authorized City Representative and City to evaluate the time extension request contemporaneously with the event that has been claimed to cause the delay.
- (c) In order to request a Time Extension ("Request for Time Extension", a "Commencement of Delay" notice must be provided in writing to the Authorized City Representative, no more than five (5) business days after the commencement of the delay, except in the event of an exceptional weather event in which case notice of an exceptional weather event shall be provided as set forth above, otherwise the claim for the time extension is waived.
- (d) If the cause of the delay continues for more than five (5) calendar days after the start of the delay, a "Termination of Delay" notice must be provided in writing, to the Authorized City Representative along with the Request For Time Extension within ten (10) calendar days after the termination of the delay.
- (e) The Design-Builder must submit its Request For Time Extension in writing to the Authorized City Representative within ten (10) calendar days after the termination of the delay. The Request For Time Extension must: (1) state the cause of the delay, (2) specifically demonstrate the negative impact of the delay on the critical path of the Project Schedule, and (3) state the number of days requested.
- (f) The Authorized City Representative shall advise the Design-Builder of its recommendation regarding the Request for Time Extension, in writing, within ten days of receipt. If the Design-Builder and Authorized City Representative agree on the Time Extension to be granted, a Field Order will be signed which states the Time Extension to be provided. If the Design-Builder disagrees with the Authorized City Representative's decision on a Request for Time Extension, the Design-Builder must proceed under the claims and disputes process required by Article 12.

9.5. Notice of Labor Disputes

Whenever the Design-Builder has knowledge that any actual or potential labor disputes is delaying or threatens to delay the timely performance of this Contract, the Design-Builder must immediately give notice to the Authorized City Representative in accordance with the notice requirements of this Article 9 and must include all available information with respect thereto to the City.

ARTICLE 10. CHANGES IN THE WORK

10.1. City's Right to Change Work

The City reserves the right to direct, by written Field Order, changes in the Work or Contract time, or the Baseline Schedule without prior notice to the Design-Builder's surety and the Design-Builder is obligated to perform in accordance with the Field Order. These changes may consist of additions, deletions, or other revisions to the Work and/or changes in the Contract time, at the discretion of the City, with the Contract Sum and/or the Contract Completion Date and/or the Baseline Schedule being adjusted as appropriate. The Design-Builder must begin the changed Work upon receipt of a duly executed Field Order. A Field Order is a written order to the Design-Builder, signed by the Authorized City Representative with the prior approval of the Commissioner and Chief Procurement Officer. The Design-Builder must begin the changed work upon receipt of the signed Field Order. Pursuant to Section 2-92-730(d) of the Municipal Code of Chicago, for each Field Order which, by itself or aggregated with previous Field Orders, increases the Contract value by ten percent (10%) of the initial Contract value or Fifty Thousand Dollars (\$50,000), whichever is less, the Design-Builder will make good faith efforts to increase the participation of M/WBE Subcontractors already participating in the Contract.

10.2. Design-Builder's Request

The Design-Builder must submit to the Authorized City Representative written copies of any request for adjustment to the Contract Price, Contract time and/or Baseline Schedule for such changed Work, in accordance with the requirements of this Article.

10.3. Payment for Changes

The adjustment in Contract Sum, if any, for changes (either additions, deletions or revisions) in the Work or Contract time or changes to the Baseline Schedule, shall be made in accordance with this section. Where changes in the Work involve both additions and deletions, any percentage mark-ups applicable to labor and materials as set forth below shall be applied to the net difference. An adjustment in Contract Sum and/or Contract time requires a Contract Modification. Payment for a Contract Modification will be made after the Contract Modification is executed by the City. The Commissioner may require additional documentation to facilitate approval for changes in the work. Design-Builder will comply with any request for additional documentation.

10.3.1. Unit Price Basis: To the extent that Changes In the Work result in an increase or decrease in the quantities of unit priced Work, as applicable, to be performed, the adjustment in Contract Price will be as follows:

- a. All increases or decreases in such Work of the type that appears in the Contract as unit price items shall, except as provided in paragraph (b.) below, be paid for or deducted at the Contract unit prices as bid by the Design-Builder or as established by an approved lump sum Breakdown.
- b. For line items that represent ten percent (10%) or more of the original Contract Price, and actual quantities of these line items represent a twenty-five percent (25%) or more variance from the bid quantities, but are not deleted in their entirety, the Contract Price adjustment will be based on a

negotiated unit price based on costs which are demonstrated by the Design-Builder and agreed to by the Commissioner, subject to approval of the Chief Procurement Officer, in a method consistent with the paragraph titled "Proposal Basis". The negotiated unit price may be higher, lower, or equal to the unit price as bid/proposed by Design-Builder. If the Commissioner and Design-Builder are unable to agree on a negotiated unit price for the changed Work, the Commissioner shall determine a reasonable unit price to be incorporated by a Contract Modification, which shall be prepared by the Commissioner and signed by the Design-Builder for submission to the City for execution. However, the Design-Builder may dispute the amount of the unit price determined by the Commissioner as a Change Claim pursuant to Article 12.

- c. For line items that represent ten percent (10%) or more of the Contract Price, and are deleted in their entirety, the Design-Builder will only be compensated for any materials or equipment that were ordered in accordance with the approved Baseline Schedule and approved submittal prior to Design-Builder's receipt of the notice of deletion of the line item, providing that the materials and equipment order could not be cancelled, nor returned to the supplier less restocking fees and also provided that the materials and equipment are delivered to the City, found acceptable, and are adequately protected for storage. Design-Builder shall not be entitled to any lost profits on Work that was deleted, or any other costs or compensation.
- d. The Design-Builder must provide a breakdown by Contract line item listing the total percentage of each line item attributable to M/WBE firms.

10.3.2. Proposal Basis: To the extent that there are no unit prices for the changed Work, either as bid or as identified in an approved Breakdown of a lump sum, the Contract Price adjustment for the changed Work may be based upon a price agreed to by the City and Design-Builder.

If the changed Work is to be completed on a proposal basis, a proposal for the changed Work must be provided by the Design-Builder to the Authorized City Representative and accepted by the Commissioner prior to the date on which the changed Work is fifty percent (50%) complete. Until such time a proposal is agreed to by the City, the Design-Builder will submit a Time and Material Work Report as required below. In addition, if the Commissioner has not accepted the proposal for the changed Work prior to the commencement of the changed Work, time and material work reports must be maintained by the Design-Builder, until a proposal is agreed to by the Design-Builder and City through the signing of a Contract Modification. If there is no agreement between the Design-Builder and City as to the Contract Price adjustment and/or Contract time adjustment for the changed Work on a proposal basis prior to the completion of fifty percent (50%) of the changed Work, the changed Work will be paid for on a time and material basis.

However, for pay items that are deleted in their entirety, where there are no unit prices for the changed Work, either as bid or as identified in an approved Breakdown of a lump sum, the Design-Builder will only be compensated for any materials or equipment that were ordered in accordance with the approved Baseline Schedule prior to Design-Builder's receipt of the notice of deletion of the Work, providing that the materials and equipment ordered could not be cancelled, and also provided that the materials and equipment are delivered to the City and are found acceptable. Design-Builder shall not be entitled to any lost profits on Work that was deleted, or any other costs or compensation.

Proposal Pricing: The proposal submitted by the Design-Builder shall be a starting point for negotiation between the City and Design-Builder. Any proposal submitted in writing by the Design-Builder for consideration for changed Work must be broken down into segments of cost as follows:

- a. Labor: Number of proposed labor hours multiplied by the base wage plus an amount not to exceed thirty percent (30%) to cover jobsite general conditions, overhead, and profit. All indirect costs must be part of the overhead, including but not limited to supervision, engineering, safety, surveying, quality control, and other technical personnel. Fringe benefits, as allowed by the applicable labor union, multiplied by the proposed number of labor hours, plus an amount up to ten percent (10%) of the total fringe benefit may be allowed.
- b. Insurance and Payroll Taxes: Cost for unemployment insurance contributions and social security taxes on the extra Work, to which an amount not to exceed ten percent (10%) of the cost of these items will be added. The Design-Builder must furnish satisfactory evidence of the rate or rates paid for such insurance and taxes.
- c. Material: Cost of materials (accepted by the Commissioner and incorporated into the Work) plus an amount not to exceed fifteen percent (15%) of the cost of material to cover profit and handling charges of Design-Builder performing the Work. Material cost must be supported by price quotes or invoices from the suppliers and must be net of any discounts or rebates offered by the suppliers.
- d. Equipment: For equipment owned by the Design-Builder, costs will be determined by the number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Equipment Watch Rental Rate Blue Book" as issued by Equipment Watch. Equipment rates as allowed by the latest revision of Equipment Watch Rental Rate Blue Book shall be the total Federal Highway Administration (FHWA) hourly rate. Idle equipment shall consist of the percentage sum of the following elements: depreciation, cost of facilities capital (CFC) and indirect cost multiplied by the hourly rate. For equipment rented by Design-Builder, rates will be determined by the Equipment Distributors' Compilation of Rental Rates (AED Green Book) for the period that said machinery and equipment are to be used on such 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 available records of the Design-Builder or other information concerning the expense of operating that type of equipment.
- e. Cost for Increase in Performance Bond: The Design-Builder must furnish the Authorized City Representative written documentation from the bonding company 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 Price to which no mark-up will be added. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the bonding company, a percentage of the total change will be added or subtracted, as determined by the Commissioner and Chief Procurement Officer, to cover the increase or decrease of the cost of the bond. No bond costs will be applied to proposal pricing for Contract allowances. Bond costs are acceptable if an increase is required to a Contract allowance.
- f. When Work is to be performed by a Subcontractor, the proposal may include as administrative costs an amount not to exceed ten percent (10%) of the first ten thousand dollars (\$10,000.00) and five percent (5%) of any amount over ten thousand (\$10,000.00) of the total approved costs of such Work. The Subcontractor, however, is not allowed any additional markup if it subcontracts its Work to a third party. The use of a Subcontractor will require 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 a)

through d) above, or as required by the Commissioner.

- g. M/WBE Breakdown: The Design-Builder must provide a breakdown by cost with each proposal outlining the total dollar amounts to be paid to itself and each Subcontractor/Supplier pertaining to the changed work. This breakdown must distinguish each Subcontractor/Supplier by its minority status (i.e. Non-Minority, DBE).

10.4. Time and Material Basis

The Authorized City Representative will provide the Design-Builder with daily Work Report forms for use on the project. Time and Material Work Reports will be used for all changed work that does not have an approved proposal. Time and Material Work Reports are also required for all work the Design-Builder feels is out of the Contract scope and plans to claim. If the changed Work is not subject to unit pricing and the City and Design-Builder cannot agree on a price based on a proposal prior to the time the Work is fifty percent (50%) complete, the Work shall be paid for on a time and material basis. The Design-Builder must notify the Authorized City Representative of all Time and Material Work in advance for work to be verified. The Design-Builder will fill in detailed information on the Work Report and have it signed by the Authorized City Representative at the end of the shift. The Design-Builder will submit the Work Report to the Authorized City Representative within 24 hours of completion. All invoices for changed Work must be submitted by Design-Builder within fifteen (15) days after completion of the changed Work. Design-Builder's 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 which may be awarded without the signature of the Design-Builder.

Time and Material Billing:

- a. Labor: For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, the Design-Builder shall be entitled to receive the actual hourly wage rate paid for every hour that said labor and foremen are actually engaged in such Work.
- b. The Design-Builder shall receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work.
- c. An amount equal to thirty percent (30%) of above a. and an amount equal to ten percent (10%) of above b. will also be paid to the Design-Builder to cover general conditions, overhead, and profit. No additional allowance or payment will be made for general superintendence. All indirect costs must be part of the overhead, including but not limited to supervision, engineering, safety, surveying, quality control, and other technical personnel
- d. No payment will be made for labor performed on a time and material basis until the Design-Builder has furnished the Authorized City Representative with itemized statements of the labor cost as follows:
 - (1) Name, classification, date, daily hours, total hours, rate and extension for each journey worker, apprentice and foreman.
 - (2) Certified payrolls or certified copies thereof, 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 employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. The labor rates will be audited and corrected against the certified payrolls. Falsification of the certified payroll is an offense punishable by law.

- e. Insurance and Payroll Tax: Cost for unemployment insurance contributions and social security taxes on the extra Work and for other insurance coverage on the extra Work required of the Design-Builder by the Contract and not included in or provided under the OCIP (if OCIP is applicable), to which an amount not to exceed ten percent (10%) of the cost of these items will be added. The Design-Builder must furnish satisfactory evidence of the rate or rates paid for such insurance and taxes.
- f. Materials: For materials accepted by the Commissioner and used as an integral part of finished Work, the Design-Builder shall receive the actual costs of such material delivered on the job site, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth), as shown by original receipted bills, to which fifteen percent (15%) will be added to the first ten thousand dollars (\$10,000.00) and ten percent (10%) for any amounts over ten thousand dollars (\$10,000.00).
- g. The Design-Builder 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., which are not an integral part of the finished Work. The amount of reimbursement must be reasonable and agreed upon in writing before such Work is begun and supported by invoices no percent shall be added. The salvage value of such materials shall be taken into consideration in the reimbursement amount.
- h. No payment will be made for material costs until the Design-Builder has furnished itemized statements of the material costs, which must include:
 - (1) Quantities of materials, prices, and extension.
 - (2) Material transportation costs supported by receipted invoices.
 - (3) Receipted invoices for all materials used. However, if materials used on the time and material Work are not specifically purchased for such Work but are taken from the Design-Builder's stock, then in lieu of the invoices, the Design-Builder must furnish an affidavit certifying that such materials were from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Design-Builder. The price quoted for such material must be reasonable and acceptable as per the normal industry practice.
- i. Equipment: For equipment owned by the Design-Builder, costs will be determined by the number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Equipment Watch Rental Rate Blue Book" as issued by Equipment Watch. Equipment rates as allowed by the latest revision of Equipment Watch Rental Rate Blue Book shall be the total Federal Highway Administration (FHWA) hourly rate. Idle equipment shall consist of the percentage sum of the following elements: depreciation, cost of facilities capital (CFC) and indirect cost multiplied by the hourly rate. For equipment rented by Design-Builder, rates will be determined by the Equipment Distributors' Compilation of Rental Rates (AED Green Book) for the period that said machinery and equipment are to be used on such 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 available records of the Design-Builder or other information concerning the expense of operating that type of equipment.
- j. When equipment is rented, the Design-Builder shall receive actual rental cost as shown by original receipted bills to which five percent (5%) shall be added which shall compensate Design-Builder for standard operating costs, including but not limited to: routine servicing and repair, service and lube labor, fuel, lubricants, filters, tires, tire service, and lube trucks.

- No additional compensation for ordinary operating expenses will be allowed.
- k. No payment will be made for equipment not shown on the Daily Work Report. No payment will be made 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.
 - l. Bond: The City will pay the Design-Builder the actual increase in cost of its performance bond. The Design-Builder must 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 Price to which no percent will be added. No bonding costs will be allowed for Sub-contractor. In the absence of written documentation from the bonding company, a percentage of the total change will be added or subtracted, as determined by the Commissioner and Chief Procurement Officer, to cover the increase or decrease of the cost of the bond. No bond costs will be applied to Time & Materials pricing for Contract allowances. Bond costs are acceptable if an increase is required to a Contract allowance.
 - m. When Work is performed by a single Subcontractor or multiple Subcontractors, the Design-Builder shall receive as administrative costs an amount equal to ten percent (10%) of the first ten-thousand dollars (\$10,000.00) and five percent (5%) of any amount over ten-thousand dollars (\$10,000.00) of the total approved costs of such Work. The Subcontractor or Subcontractors are not allowed any additional markup. 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 this Section.
 - n. Documentation: For additional Work performed on a time and material basis the Design-Builder must each day submit to the Authorized City Representative detailed and complete records of the labor, material, equipment, and other costs relating to any force account Work performed on the previous day. These Daily Work Reports are to be submitted in the format designated by the Commissioner and must be signed by the Design-Builder and the Authorized City Representative. Failure of the Design-Builder to submit Daily Work Reports to the Authorized City Representative within twenty-four (24) hours after the completion of the shift's work may, at the sole discretion of the Commissioner, cause these reports to be rejected and disqualified for payment.
 - o. M/WBE Breakdown: The Design-Builder must provide a breakdown by cost with each proposal outlining the total dollar amounts to be paid to itself and each Subcontractor/Supplier pertaining to the changed work. This breakdown must distinguish each Subcontractor/Supplier by its minority status. If the M/WBE percentage of participation is less than the Contract goal, an explanation of good faith efforts to meet the goal must be provided.
 - p. Base Contract Work On a Premium-Time Basis:
 - (1) Premium Time costs will be paid, for Contract Work performed outside of regularly scheduled working hours as defined by the Contract Documents, only if expressly directed in writing by the City prior to the Design-Builder commencing the Work.
 - (2)
 - (3) Compensation, when authorized, shall cover only the direct cost of the premium portion of the time involved and shall 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, which are attributed to the premium portion of the time, will be paid. If taxes are charged by the Design-Builder,

the Commissioner may require the Design-Builder to supply verification that the employees' Social Security Tax, Federal Unemployment Tax, and State Unemployment Tax limits have not been exceeded.

- (4) An amount equal to seven percent (7%) of the sum of the premium portion of the work plus taxes will also be paid to the Design-Builder or Subcontractor performing the work to cover jobsite general conditions, overhead, and profit. All indirect costs shall be part of the overhead, including but not limited to supervision, engineering, and other technical personnel.
- (5) If the Design-Builder enters into a subcontract, the Design-Builder will be allowed an additional two percent (2%) of the Subcontractor's premium time billing to cover the Design-Builder's supervisory and related expense on subcontract operations. The Subcontractor is not allowed the additional two percent (2%) if it sublets its Work.
- (6) Daily Work Reports in the format designated by the Commissioner for the Premium Time hours must be kept and signed 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.

10.5. Changes on Lump Sum Contracts or Lump Sum Items in Unit Priced Contracts

All increases or decreases in elements of the Work, that are listed in the Contract Price Breakdown as unit prices or that can otherwise be assigned a value based on the approved Contract Price Breakdown will be compensated, for the purpose of any change, based on those prices.

10.6. Miscellaneous

- a. For the purpose of this section, any business entity, which employs field labor and performs Contract Work on the job site, is defined as a Subcontractor. (Suppliers/deliverers of materials are not considered as field labor).
- b. 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 as a Subcontractor and the mark up as specified in Section 10.4 if will apply.
- c. Any adjustment in Contract time due to changed Work will be based on the impact that the changed Work has on critical path items in the Monthly Update Schedule.

10.7. Contract Modification

The final terms of any adjustment in Contract Price and/or Contract Completion Date relating to changed Work must be incorporated into a written Contract Modification executed by the City and Design-Builder (except as provided in Section 10.4. Payment for a Contract Modification and/or an adjustment in Contract Completion Date will be made after the Contract Modification is executed by the City. Contract Modifications resulting in Contract Price adjustments in excess of \$5,000 require execution by the Mayor, the Comptroller and the Chief Procurement Officer.

10.8. Design-Builder's Release

Except as otherwise agreed to by the Commissioner and Chief Procurement Officer, each Contract Modification shall constitute a full release to the City from granting any additional compensation or extension of time arising or resulting from the Contract Modification. The release that the Design-Builder must sign will state, "By executing this Contract Modification, Design-Builder certifies that it has reviewed and accepts the compensation and/or time extension provided in full accord and satisfaction for this Contract Modification and that it expressly waives and releases any and all additional claims and demands relating to, or arising out of, the matters covered by this Contract

Modification as more fully described in the exhibit attached hereto including but not limited to: direct, indirect, overhead, home or field office costs; profits; damages; disruptions and impact."

10.9. Failure to Comply with Order

The Design-Builder must promptly proceed with any changes in the Work, project schedule, or Contract time as directed by Field Order in writing, in accordance with Section 10.1, with or without the Contract Modification. The Design-Builder's refusal or failure to proceed promptly with the changed Work, project schedule, or Contract time as directed will constitute an event of default under the Contract.

10.10. Change Claim(s)

1. If the Design-Builder and the Authorized City Representative are unable to agree upon an adjustment in Contract Price and/or Contract Completion Date for changed Work in accordance with Section 10.4, which is executed by the City under Section 10.7, the Design-Builder may make a claim for the changed Work under this section. ("Change Claims") The Design-Builder expressly consents to both the time requirements and notice content requirements for making a Change Claim under this section. The Design-Builder acknowledges that the notice requirements set forth in this section shall be strictly enforced and agrees that any failure on the part of the Design-Builder to provide notice strictly in accordance with the requirements of this section constitutes a waiver of the Design-Builder's right to make a Change Claim for changes in the Work or to file a dispute to the Chief Procurement Officer under Article 12. The Design-Builder further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this section shall not be subject to or diminished by any claim on the part of the Design-Builder that the City or any person acting on behalf of the City directed the Design-Builder to make changes in the Work or had actual or constructive knowledge of any changes in the Work. The Design-Builder further acknowledges that the time requirements and notice content requirements of this section have the purpose, among others, of allowing the City to evaluate Change Claims contemporaneously with the Work that is the subject of the Change Claim.
2. If the Design-Builder and Authorized City Representative are unable to agree upon an adjustment in Contract Price and/or Contract time for changed Work in accordance with Section 10.10, the Design-Builder must, within fifteen (15) days of completing the changed Work, provide written notice to the Authorized City Representative, of the amount of money and/or time adjustment sought by the Design-Builder and the contractual and factual basis of each. The Design-Builder must designate the document "Notice of Claim".
3. The Authorized City Representative shall, within thirty (30) days from receipt of the Notice of Claim, respond by: requesting a meeting with the Design-Builder; making a written request for additional information from the Design-Builder, including but not limited to a general statement of the basis for the Change Claim, the facts underlying the Change Claim, the Notice of Claim to the Authorized City Representative, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the Change Claim; taking other action to attempt to resolve the Notice of Claim, and/or advising the Design-Builder in writing that it should file a Claim under Article 12, Claims and Disputes. Any steps taken by the Authorized City Representative to resolve the Notice of Claim shall not exceed sixty (60) days from receipt of the Notice of Claim unless the Design-Builder agrees to an additional amount of time in writing. The Design-Builder and Authorized City Representative may agree on a proposed adjustment of Contract Price and/or Contract Completion Date in resolution of a Notice of Claim, which proposal is subject to approval by the City in a Contract Modification under the requirements of Section 10.7.

4. If the Notice of Claim cannot be resolved as provided for in Section 10.10, the Design-Builder must follow the requirements of Article 12.
5. If the Design-Builder does not agree with the adjustment for time and/or compensation proposed by the Authorized City Representative, the Design-Builder must follow the procedures set out by the Contract to file a Claim and/or Dispute as provided in Article 12. If the Design-Builder does not follow the procedures set out by the Contract to file a Claim and/or Dispute as provided in Article XVII, the failure to do so constitutes a waiver of the right to make a Claim or file a Dispute to the Chief Procurement Officer. In the event of Design-Builder's waiver, the Commissioner may file a Dispute, pursuant to Article 12, with the Chief Procurement Officer seeking a final decision of the Chief Procurement Officer regarding adjustment in the Contract Price and/or Contract time for the changed Work.

10.11. City Audit

All documents, records, books, and accounts, relating to changes in the Work are subject to the audit provisions of Article 8.

ARTICLE 11. EVENTS OF DEFAULT

11.1. Events of Default

(a) In addition to any breach of contract and events of default described within the Contract Documents, each of the following occurrences constitutes an Event of Default by the Design-Builder under the Agreement:

1. Failure or refusal on the part of the Design-Builder to duly observe or perform any obligation or agreement on the part of the Design-Builder contained in the Agreement, which failure or refusal continues for a period of 3 Days (or such longer period as the City, in its sole discretion, may determine if such failure is not capable of being cured within such 3-Day period) after the date on which written notice of it has been given to the Design-Builder by the City.
2. Any representation or warranty of the Design-Builder set forth in this Agreement or otherwise delivered pursuant to the Agreement which is or was false in any material respect when so made or furnished.
3. The Design-Builder becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals will take any action in furtherance of any of the foregoing.
4. Any proceeding is commenced against the Design-Builder seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or

dismissed within sixty (60) days following commencement of the proceeding, or appointment of, without the Design-Builder's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of the Design-Builder's assets and properties, and such appointment will not have been vacated, stayed, discharged, bonded or otherwise dismissed within sixty (60) days of the appointment.

5. The Design-Builder's material failure to perform any of its obligations under the Agreement, including any of the following:
 - i. Failure due to a reason or circumstance within the Design-Builder's reasonable control to perform the Services with sufficient personnel, and equipment or with sufficient material to ensure the performance of the Services required by this Agreement within the Contract Time and Contract Sum.
 - ii. Failure to properly perform the Services in a manner reasonably satisfactory to the CPO or inability to satisfactorily perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors.
 - iii. Failure to promptly cure within a reasonable time and at no cost to the City the Services that were rejected as erroneous or unsatisfactory.
 - iv. Discontinuance of the Services for reasons within the Design-Builder's reasonable control.
 - v. Failure to comply with a material term of the Agreement, including but not limited to the provisions concerning insurance and nondiscrimination.
 6. Any change in ownership or control of the Design-Builder without prior written approval of the Commissioner, which approval the Commissioner will not unreasonably withhold.
 7. The Design-Builder's default under any other agreement it presently may have or may enter into with the City. Design-Builder acknowledges that in event of a default under the Agreement, the municipal corporations listed above may also declare a default under any such other agreements.
 8. Failure to have and maintain all professional licenses required by law to perform the Services.
 9. Failure to update promptly EDS(s) furnished in connection with this Contract when the information or responses contained in it or them is no longer complete or accurate.
 10. Design-Builder's repeated or continued violations of City ordinances unrelated to performance under the Contract that in the opinion of the CPO indicate a willful or reckless disregard for City laws and regulations.
 11. Design-Builder's use of a subcontractor that is currently debarred by the City or otherwise ineligible to do business with the City.
- (b) The occurrence of any event of default permits the City, at the City's sole option, to declare Design-Builder in default. The CPO will give Design-Builder written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice").

- (c) If a Cure Notice is sent, the CPO may in his/her sole discretion give Design-Builder an opportunity to cure the default within a specified period of time, which will typically not exceed 30 days unless extended by the CPO. The period of time allowed by the CPO to cure will depend on the nature of the event of default and the Design-Builder's ability to cure. In some circumstances the event of default may be of such a nature that it cannot be cured. Failure to cure within the specified time may result in a Default Notice to the Design-Builder.
- (d) Whether to issue the Design-Builder a Default Notice is within the sole discretion of the CPO and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Contract
- (e) If the CPO issues a Default Notice, the CPO will also indicate any present intent the CPO may have to terminate this Contract. The decision to terminate is final and effective upon giving the notice. If the CPO decides not to terminate, this decision will not preclude the CPO from later deciding to terminate the Contract in a later notice, which will be final and effective upon the giving of the notice or on such later date set forth in the Default Notice.
- (f) When a Default Notice with intent to terminate is given, Design-Builder must discontinue any Services, unless otherwise directed in the notice.

11.2. Design-Builder's Opportunity to Cure

In the event the Chief Procurement Officer gives the Design-Builder notice in writing of actions constituting default, under this section, the Design-Builder must cure the default within ten (10) days of receipt of the notice from the Chief Procurement Officer. If the Chief Procurement Officer receives written notification from the Commissioner that the Design-Builder has not cured the default set out in the notice within the ten day cure period, the Chief Procurement Officer may declare that the Contract is terminated for default. The Chief Procurement Officer's declaration of termination shall be final and effective. Written notification of notice to cure and termination for default shall be provided to the Design-Builder and surety by the Chief Procurement Officer. The City, through issuance of its Notice to Cure, does not waive any rights or remedies available pursuant to this Agreement or in law or in equity. The failure of the Chief Procurement Officer to default the Design-Builder within ten (10) days does not waive the City's right to terminate the Contract pursuant to the cure notice.

11.3. City's Remedies

- (a) After giving a Default Notice, the City may exercise any right, power or remedy permitted to it by law or in equity and has, in particular, without limiting the generality of the foregoing, the right to the following remedies:
 - 1. The right to take over and complete the Services, or any part of them, at Design-Builder(s) expense and as agent for Design-Builder, either directly or through others, and bill Design-Builder for the cost of the Services, and Design-Builder must pay the difference between the total amount of this bill and the amount the City would have paid Design-Builder under the terms and conditions of this Contract for the Services that were assumed by the City as agent for Design-Builder.

2. The right to terminate the Agreement upon written notice to the Design-Builder, in which event the City has no further obligations hereunder or liability to the Design-Builder except as to payment for Services actually received and accepted by the City through the effective date of termination, subject to set off of any claims of the City against the Design-Builder for failure to properly perform its services.
 3. The right to seek specific performance, an injunction or any other appropriate equitable remedy.
 4. The right to seek money damages.
 5. The right to withhold all or any part of Design-Builder's compensation under this Contract.
 6. The right to deem Design-Builder non-responsible in future contracts to be awarded by the City.
- (b) No course of dealing on the part of the City or delay or failure on the part of the City to exercise any right will operate as a waiver of such right or otherwise prejudice the City's rights, powers or remedies. The City's decision to terminate the Agreement is not subject to claim or dispute under the terms of this Agreement.

11.4. Remedies Not Exclusive

No right or remedy in the Agreement conferred upon or reserved to the City is exclusive of any right or remedy provided or permitted under this Agreement or by law or equity, but each, with the exception of the Liquidated Damages for Delay in performance of the Work set forth in Article 4.05(f)(1), is cumulative of every other right or remedy given in the Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

11.5. City's Reservation of Rights

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

11.6. Early Termination

- (a) The City may terminate this Contract, in whole or in part, at any time by a notice in writing from the City to the Design-Builder. The effective date of termination will be the date the notice is received by the Design-Builder or the date stated in the notice, whichever is later. After the notice is received, the Design-Builder must restrict its activities, and those of its Subcontractors, to activities pursuant to direction from the City. No costs incurred after the effective date of the termination are allowed unless the termination is partial.

- (b) Design-Builder is not entitled to any anticipated profits on services, work, or goods that have not been provided. The payment so made to the Design-Builder is in full settlement for all services, work or goods satisfactorily provided under this Contract. If the Design-Builder disputes the amount of compensation determined by the City to be due Design-Builder, then the Design-Builder must initiate dispute settlement procedures in accordance with the Disputes provision.
- (c) If the City's election to terminate this Contract for default pursuant to the default provisions of the Contract is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be deemed to be an early termination pursuant to this Early Termination provision.

ARTICLE 12. CLAIMS AND DISPUTES

12.1. General

All claims arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including questions concerning compensation, questions concerning the disposition of claims between the Design-Builder and Subcontractors that the City has objected to, and all claims for alleged breach of contract (collectively, "Claims") must be made pursuant to this Article of the Agreement, and must first be presented to the Authorized City Representative.

12.2. Claims and Disputes between Design-Builder and Subcontractors

Design-Builder shall develop and implement policies and procedures for the resolution of claims made by Subcontractors, and such policies and procedures are subject to the review and approval of the City. Design-Builder shall provide prompt notice to the City of any claim upon the Design-Builder's first recognition of the conditions giving rise to the claim, and maintain a log of such claims which shall be reported monthly to the City. The City expects and requires the Design-Builder to address Claims promptly, diligently and fairly, acting at all times within the best interests of the Project and in accordance with this Article. In the event that the City and the Design-Builder agree that the disposition of a Claim requires an adjustment to the Contract Time or Contract Sum (or any component thereof), Design-Builder and the City shall, promptly and in good faith, negotiate and execute a Contract Modification.

12.3. Claims and Disputes Between Design-Builder and the City

12.3.1. General. The Design-Builder and the Department of Aviation must attempt to resolve all disputes arising under this Agreement in good faith, taking such measures as, but not limited to investigating the facts of the dispute and meeting to discuss the issue(s).

12.3.2. Notice.

- (a) The Design-Builder expressly consents to both the time requirements and notice content requirements for claims and/or disputes under this section. The Design-Builder acknowledges that the notice requirements set forth in this section will be strictly enforced and agrees that any failure on the part of the Design-Builder to provide notice strictly in accordance with the requirements of this section will constitute a waiver of the Design-Builder's right to submit a claim or dispute. The Design-Builder further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this section will not be subject to or diminished by any claim on the part of the Design-Builder that the CDA or Commissioner or any person acting on behalf of

either of them had actual or constructive knowledge of any Claim or Dispute or any facts or circumstances supporting any such Claim or Dispute.

- (b) The Design-Builder must provide notice, in writing, to the CDA and the Authorized City Representative of any claim for differing site conditions within three (3) business days of discovery.
- (c) The Design-Builder must provide notice, in writing, to the CDA and the Authorized City Representative of any claim other than those for differing site conditions, within five (5) days after starting the work that is affected by the claim. The notice shall be referenced as a "Notice of Claim Related Work" and must state the nature of the claim, the work that is affected by the claim, and the anticipated duration of the Work.
- (d) The Design-Builder must provide notice, in writing, to the CDA and the Authorized City Representative of any claim based on: a differing site condition; a change in the Work directed by the CDA or Authorized City Representative; or any other cause within fifteen (15) days of completion of the changed Work.

12.3.3. Procedure for Bringing Disputes to the Commissioner.

- (a) In the event of any disagreement between the Design-Builder and the CDA which the Design-Builder and the CDA have attempted, but been unable, to resolve, including, without limitation, changes, time extensions, claims, allowable costs or any other issues of fact or Contract Document interpretation based upon, relating to, or arising under the Contract, the Design-Builder shall submit the dispute to the Commissioner for final determination. The Design-Builder's failure to submit the dispute within thirty (30) days of the completion of the mediation session is an express and knowing waiver of the Dispute, unless otherwise agreed to in writing by the City and the Design-Builder. The Commissioner may consider issues of Contract interpretation in connection with decisions to be made in resolving Disputes. In order to bring a dispute to the Commissioner of Aviation, Design-Builder must provide a general statement of the basis for its claim, the facts underlying the Claim, reference to the applicable Agreement provisions, and all documentation that describes, relates to and supports the Claim. By submitting a Claim, the Design-Builder certifies that:
 - 1. The Claim is made in good faith;
 - 2. The Claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
 - 3. The amount of the Claim accurately reflects the amount that the claimant believes is due from the City; and
 - 4. The certifying person is duly authorized by the claimant to certify the Claim.
- (b) Request Requirements: Requests for resolution of Disputes must be made by the Design-Builder in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Design-Builder and CDA; 3) the facts underlying the Dispute; 4) reference to the applicable provision of the Contract Documents by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the Dispute; 6) all documentation which describes and relates to the Dispute and 7) if applicable, a statement explaining why the Design-Builder believes that prior to rendering a final decision, the Commissioner should meet with the Design-Builder, the CDA or any other parties believed to be necessary to the resolution of the Dispute. Copies of the request for resolution of the Dispute must promptly be

provided to the Commissioner and CDA on the same day. In addition, the Design-Builder's Dispute and any subsequent correspondence that relates to the Dispute which the Design-Builder provides to the Commissioner, must be copied to the Authorized City Representative and CDA. The CDA shall have thirty (30) days to respond in writing to the Design-Builder's submission by supplementing the Design-Builder's submission or to provide its own submission to the Commissioner and Design-Builder. However, the CDA may request, and the Commissioner may allow an additional period of time to respond. Failure by the CDA to respond shall not be deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the Dispute. The Commissioner's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Commissioner.

- (c) Commissioner's Decision: The Commissioner's final decision shall be rendered in writing no more than thirty-five (35) days after receipt of the response of the CDA was filed or was due, unless the Commissioner notifies the Design-Builder and CDA before the end of the thirty-five (35) day period that an additional period, not to exceed thirty (30) days, is needed for the Commissioner to respond. The Commissioner's decision shall be conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below. If the Commissioner does not render a "final decision of the Commissioner" within the prescribed time frame, then the Claim should be deemed denied by the Commissioner.
- (d) Implementation of Decision: In the event that the Commissioner's final decision requires a change to the Contract, the Commissioner's final decision shall be implemented through a Contract Modification which shall be made a part of the Contract, with or without the signature of the Design-Builder.

12.3.4. Procedure for Bringing Disputes to the CPO

- (a) Submission to the CPO. Only after the Commissioner has rendered a final decision denying the Design-Builder's Claim may a dispute be brought before the CPO. If the Design-Builder and the Department of Aviation are unable to resolve the dispute, prior to seeking any judicial action, the Design-Builder must and the City may submit the dispute to the CPO for an administrative decision based upon the written submissions of the parties. The party submitting the dispute to the CPO must include documentation demonstrating its good faith efforts to resolve the dispute and either the other party's failure to exercise good faith efforts or both parties' inability to resolve the dispute despite good faith efforts. The decision of the CPO is final and binding. The sole and exclusive remedy to challenge the decision of the CPO is judicial review by means of a common law writ of certiorari.
- (b) The administrative process is described more fully in the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago", which are available in City Hall, 121 N. LaSalle Street, Room 103, Bid and Bond Room, and on-line at http://www.cityofchicago.org/content/dam/city/depts/dps/RulesRegulations/Dispute_Regulations_2002.pdf
- (c) Remedy: If either the Design-Builder or City does not agree with the decision of the CPO, the sole and exclusive remedy is judicial review by a common law *writ of certiorari*. Unless such review is sought within thirty-five (35) days of receipt of the CPO's decision, all right to seek judicial review is waived.

- (d) Design-Builder's Performance of Work: The Design-Builder may not withhold performance of and must prosecute any Work required by the Contract during the dispute resolution period, including judicial resolution, and City shall continue to make payments to the Design-Builder for undisputed Work pursuant to the terms of the Agreement. The Design-Builder must prosecute all of its Work, including any disputed Work, with the same diligence and effort as if no dispute existed. The Commissioner's written determination must be complied with pending final resolution, including judicial resolution of the Dispute. Neither the Commissioner's determination, nor the actions of the Design-Builder or the Authorized City Representative in connection therewith, nor the continued performance by either party, shall constitute an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.
- (e) Administrative Appeal of Dispute: The Design-Builder must follow the procedures set out in this Article 12, "Claims and Disputes", and receive the Commissioner's and CPO's final decision as a condition precedent to filing a judicial review of the decision by common law writ of certiorari.
- (f) Joinder. Third parties shall be joined in any of the dispute resolution processes listed above, by consolidation, joinder, or otherwise, who are subject to a valid dispute resolution agreement with the party seeking joinder of such third party. Design-Builder shall include identical dispute resolution clauses as sated herein in each of its agreements with its Subcontractors, which will require the Subcontractors to be joined in any dispute resolution process by consolidation, joinder or otherwise.
- (g) Claims Asserted by the City. Notwithstanding anything to the contrary herein, in the event the City cannot resolve a claim, the City in its sole and absolute discretion may file its claim against the Design-Builder immediately in the Circuit Court of Cook County. The Design-Builder is not required to proceed with its claim in accordance with this Article.

1. The Design-Builder will designate the document "Claim." The Claim must include:
 - i. The amount of money and/or time extension sought by the Design-Builder, and the contractual and factual basis for each;
 - ii. A general statement of the basis for the claim;
 - iii. The facts underlying the claim;
 - iv. The Notice of Claim Related Work to the Authorized City Representative;
 - v. Reference to the applicable Agreement and Contract Document provisions and;
 - vi. All documentation that describes, relates to, and/or supports the claim.
2. The CDA and the Authorized City Representative will, within thirty (30) days of receipt of the Claim, respond by: requesting a meeting with the Design-Builder; making a written request for additional information from the Design-Builder; taking other action to attempt to resolve the Claim; and/or advising the Design-Builder, in writing of the CDA's position regarding the relief sought in the Claim.
3. The Design-Builder's failure to file a Dispute with the Commissioner within thirty the time periods designated herein will constitute a waiver of the Claim.

12.4. No Waiver of Legal Rights

- (a) Neither the acceptance by the City or any representative of the City, nor any payment for or acceptance of the whole or any part of the Work, nor any 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

herein reserved or any right of the City to damages herein provided. A waiver of any breach of the Contract is not held to be a waiver of any other or subsequent breach.

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

12.5. Design-Builder's Self-Help Prohibited

The Design-Builder must never withhold performance of its Services by, for example, refusing to review and approve appropriately submitted invoices or pay applications, to make recommendations on Subcontractor claims, or promptly to issue other appropriate approvals needed by others where doing so would potentially harm third parties, such as its Subcontractors. Doing so to gain potential leverage in negotiating or settling the Design-Builder's claims against the City will constitute bad faith on the Design-Builder's part. This provision is not intended to prohibit the Design-Builder from exercising its well-considered professional judgment, however, in carrying out its duties and responsibilities under the Agreement.

12.6. Force Majeure

Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. If a force majeure occurs, the party delayed or unable to perform will give prompt notice to the other party, and the City may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Design-Builder under the Agreement for the duration of the force majeure. The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature or God, such as tornadoes, earthquakes, floods or adverse weather; fire, or of people, such as acts of terrorism; or of governments, such as imposition of martial law or other event beyond the Design-Builder's reasonable control provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Design-Builder, and provided further that the Design-Builder has taken reasonable precautions to prevent further delays as a result of such causes. Notwithstanding the foregoing, Design-Builder may be entitled to an equitable adjustment to the Project Schedule subject to the limitations of this Agreement, in the event of a Force Majeure event.

ARTICLE 13. AIRPORT SECURITY AND OPERATIONS

13.1. Airport Rules and Regulations

The Design-Builder will comply, and will use all reasonable efforts to cause its Subcontractors, guests, and invitees to comply, with all rules and regulations governing the conduct and operation of the Airport, which may be promulgated from time to time by the Commissioner.

13.2. Confidentiality of Airport Security Data

Design-Builder has an ongoing duty to protect confidential information, including but not limited to any information exempt from disclosure under the Illinois Freedom of Information Act such as information affecting security of the airport ("Airport Security Data"). Airport Security Data includes any Sensitive

Security Information as defined by 49 CFR Part 1520. Design-Builder acknowledges that information provided to, generated by, or encountered by Design-Builder may include Airport Security Data. If Design-Builder fails to safeguard the confidentiality of Airport Security Data, Design-Builder is liable for the reasonable costs of actions taken by the City, the airlines, the Federal Aviation Administration ("FAA"), or the Transportation Security Administration ("TSA") that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements, procurement and installation of security devices, and posting of guards. All Subcontracts or purchase orders entered into by the Design-Builder, with parties providing material, labor or services to complete the Work, must contain the language of this section. If the Design-Builder fails to incorporate the required language in all Subcontracts or purchase orders, the provisions of this section are deemed incorporated in all Subcontracts or purchase orders.

13.3. Aviation Security

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

13.4. Airport Security and Badging

- (a) As part of airport operations and security, the Design-Builder must obtain from the airport badging office Airport Security Badges for each of his employees, subcontractors, material men, invitees or any person(s) over whom Design-Builder has control, which must be visibly displayed at all times while at the airport.
- (b) No person will be allowed beyond security checkpoints without a valid Airport Security Badge. Each such person must submit signed and properly completed application forms to receive Airport Security Badges. Additional forms and tests may be required to obtain Airport Drivers Certification and Vehicle Permits. The application forms will solicit such information as the Commissioner may require in his discretion, including but not limited to name, address, date of birth (and for vehicles, driver's license and appropriate stickers).
- (c) The Design-Builder is responsible for requesting and completing the form for each employee and subcontractor employee who will be working at the Airport and all vehicles to be used on the job site. Upon signed approval of the application by the Commissioner or his designee, the employee will be required to attend a presentation regarding airport security and have his or her photo taken for the badge. The Commissioner may grant or deny the application in his sole discretion. The Design-Builder must make available to the Commissioner, within one day of request, the personnel file of any employee who will be working on the project.

- (d) Airport Security Badges: Each person requiring regular access to Airside areas of the Airport must submit a signed, completed Access Control Photo ID Badge and Fingerprint Application to the Department of Aviation to receive an Airport Security Badge, which may include authorization to drive on the Aircraft Operations Area (AOA). The FAA, TSA, and City require employees of Design-Builders and all Subcontractors to provide fingerprints for a criminal history check conducted by the Federal Bureau of Investigation as a requirement to apply for an Airport Security Badge.
- (e) Airfield Access Vehicle Permits: In order for the Design-Builder to be issued Airfield Access Vehicle Permits for operation of a vehicle on the AOA, the Design-Builder must submit a Company Vehicle Access Form AIRFIELD. The Design-Builder is responsible for requesting and completing these forms for all vehicles to be used on the Project site.
- (f) Airport Security Badges, Vehicle Permits and Drivers Licenses will only be issued based upon properly completed application forms. Employees or vehicles without proper credentials may be removed from the secured area and may be subject to fine or arrest. Design-Builder will be jointly and severally liable for any fines imposed on its employees or its Subcontractors' employees.
- (g) In addition to other rules and regulations, the following rules related to Security Badges, Vehicle Permits, Driver's Licenses must be adhered to:
1. Each person must wear and display an Airport Security Badge issued to that person on his or her outer apparel, above the waist, at all times.
 2. Design-Builder must ensure that its employees required to have an ORD badge have met the security background checks and training requirements of the Airport Certification Manual and FAR Part 139. This includes, but may not be limited to:
 - i. 10-year employee background check (Design-Builder responsibility)
 - ii. Finger printing (completed at ORD)
 - iii. AOA awareness training meeting the requirements of FAR Part 139.303(c).
 - iv. Vehicle driver testing (completed at ORD)
 3. All individuals operating a vehicle on the AOA must be familiar and comply with motor driving regulations and procedures of the State of Illinois, the City of Chicago, and the Department of Aviation. The operator must be in possession of a valid, state-issued Motor Vehicle Operator's Driver Licenses. All individuals operating a vehicle on the AOA without an escort must also be in possession of a valid Airport Security Badge that includes authorization to drive on the Airside. In order to receive a badge authorizing operation of a vehicle on the AOA, the individual must attend mandatory training and pass a written examination.
 4. Unless operating under authorized escort, all vehicles and operating equipment must have an Airport Vehicle Access Permit affixed to the vehicle at all times while operating on the Airport. All required City stickers and State Vehicle Inspection stickers must be valid.
 5. Individuals must remain within their assigned area and haul routes unless otherwise instructed by the Department of Aviation.

6. The Design-Builder's personnel who function as supervisors, and those that escort the Design-Builder's equipment/operators to their designated work sites, may be required to obtain an added multi-area access designation on their personnel Airport Security Badge which must also be displayed while on the AOA.
- (h) Access to the Work sites will be as shown or designated on the Contract Documents drawings. The Design-Builder will use only designated access gates, service roads or haul roads while on Airport property.
 - (i) Whenever the Design-Builder receives permission to enter Airport property in areas that are not exit/entering points secured by Airport Security Officers, the Design-Builder will be required to provide gates that comply with Airport design and construction standards. Two (2) bonded security guards will be required at the gates when the gates are in use. Unless otherwise directed by the City, the locks and security guards will be provided by Airport Security. If Design-Builder is required to provide security guards, Design-Builder's failure to provide the necessary security will result in an immediate closure by Airport personnel of the points of access. No extension of time will be allowed for the execution of Work if the Design-Builder is required to gain access through Airport Security exit/entry points.
 - (j) The Commissioner will determine areas in which the Design-Builder may stockpile materials, and park equipment, or vehicles, and any conditions related thereto. Failure by Design-Builder, its employees, or Subcontractors to limit its materials and/or equipment to the areas designated by the Commissioner will result in Design-Builder receiving a fine of \$1,000 per hour, per event..
 - (k) Damage to any security fencing, gates, or alarms caused by the Design-Builder must be immediately reported to the Commissioner and must be restored to its original condition within an eight (8) hour period from the time of notice given by the Commissioner. During the period in which the security fencing, gates, or alarms are damaged, the damaged area must be manned by a bonded security guard of the Design-Builder until restored.
 - (l) Temporary removal of any security fencing, gate or alarm to permit construction must be approved by the Commissioner and must be manned by a bonded security guard of the Design-Builder on a twenty-four (24) hour basis during the period of temporary removal and must be restored to its original condition when construction is completed.
 - (m) Weapons, alcohol, illegal drugs, or other contraband are not allowed on the Airport premises.
 - (n) All Design-Builder's personnel and vehicles working within the airport security limits will be properly identified. All Airfield Access Vehicle Permits and Airport Security Badges will be issued to the Design-Builder by the Commissioner, as required. Return of all Permits and Badges to the Commissioner after completion of the Project is the responsibility of the Design-Builder. Final Contract Payment will not be made until all Permits and Badges issued have been returned to Department of Aviation at the Airport.
 - (o) The Design-Builder must place signage that identifies the Project and bid package on all vehicles and equipment used at the Airport. The size of the signage and information to be provided will be determined by the Commissioner.

13.5. Airport Operations

- (a) The Airport will be in operation while construction under this Contract is taking place. Time and coordination of the Work is an essential feature of this Contract, and the Commissioner will require the completion of all Work herein specified so as to offer the least obstruction and/or impediment to Airport traffic and the general operation of the Airport. All existing utilities serving the Airport will remain in continuous operation during the prosecution of the Work. The Commissioner reserves the right to place sections of the Work required under this Contract in use upon written direction to the Design-Builder.
- (b) The Design-Builder's attention is called to the fact that existing runways, taxiways, vehicular roadways, loadways, loading aprons, and passenger right-of-ways at the Airport are being used for scheduled and unscheduled aircraft. Arrivals and departures are under the control of the FAA Air Traffic Control Tower. Use of the Airport by all aircraft and Airport Operations will have precedence over all Design-Builder's operations.
- (c) The Design-Builder must cooperate fully with the Department of Aviation Airport Operations, the Commissioner, and the Commissioner in all matters pertaining to public safety and airport operations. No compensation will be allowed for any delays as a result of Airport Operations, which require that Work must be interrupted or moved from one part of the site to another.
- (d) Prior to start of the Project, Design-Builder must request of the Authorized City Representative to provide specific requirements and instructions which are applicable to the particular work site areas, including, but not limited to, areas available for storage of any equipment, materials, tools and supplies needed to perform the work. Design-Builder must advise the Authorized City Representative of the volume of equipment, materials, tools, and supplies that will be required in the secured areas of the airport in order to make arrangements for inspection of such equipment, materials, tools, and supplies at a security checkpoint.
- (e) Design-Builder must not permit or allow its employees, subcontractors, material men, invitees or any other persons over whom Design-Builder has control to enter or remain upon, or to bring or permit any equipment, materials, tools, or supplies to remain upon any part of the work site if any hazard to aircraft, threat to airport security, or obstruction of airport maintenance and operations, on or off the ground, would be created in the opinion of either the Commissioner, the Authorized City Representative, the FAA, or TSA. Design-Builder must safeguard, and may be required to account for, all items brought beyond a security checkpoint, especially with respect to tools used in a terminal building.
- (f) The Design-Builder must not permit or allow its employees, Subcontractors, material suppliers, invitees or any other persons over whom the Design-Builder has control to enter or remain upon, or to bring or permit any equipment or materials to remain upon, any part of the runways, taxiways, vehicular roadways, aprons, and passenger right-of-ways which cause any type of hazard to aircraft or to airport maintenance and operation, on or off the ground..
- (g) The Design-Builder must plan its construction operations so that material, equipment, supplies, and working personnel necessary to do the Work will enter and leave the Contract site via the gates and routes designated on the Contract Documents and/or by the City as the Work progresses. No personal vehicles will be permitted within the AOA. The Design-Builder will be responsible for the

construction, repair, and/or maintenance of all haul roads to and from the designated entrance to various Work sites.

- (h) All equipment and materials on the AOA must be marked with red obstruction lights, of a type acceptable to the Commissioner and Airport Operations and in conformity with all FAA requirements, including Advisory Circular 150/5345-43F. All obstruction lights will be kept on continuously, twenty-four hours a day, seven days a week. Proper compliance with these obstruction light requirements is essential to the protection of aircraft and human life and the Design-Builder has the responsibility of taking the initiative at all times to be aware of ceiling and visibility conditions, without waiting for the FAA Control Tower Operator or any other City representative to ask the Design-Builder to post obstruction lights.
- (i) Each vehicle and piece of equipment on the AOA must have a yellow rotating beacon or strobe light, in all operation at all times, mounted on the roof.
- (j) The Design-Builder, through the Commissioner and (Department of Aviation and FAA) Airport Operations personnel, must be in constant communications to insure safe operations on the AOA. The Design-Builder will notify the Commissioner forty-eight (48) hours prior to requesting the closing of any area so that the Airport Operations personnel can be properly coordinate the activities of the Airport and the Design-Builder.
- (k) All Vehicles and equipment must be kept within the work areas established for that work shift unless traveling to or from the project site. Under no circumstances shall vehicles or equipment be parked outside these areas. At no time shall any vehicles be parked or operate within one hundred thirty-one (131) feet of the centerline of any operational taxiway segment or within two hundred (250) feet of the centerline runway during any work shift. At no time shall any vehicles or equipment be parked within one hundred sixty (160) feet of the centerline of an operational taxiway segment or within four hundred (400) feet of the centerline of an operational runway (object free area) during periods other than the work shifts.
- (l) The Design-Builder must maintain existing utilities in operation at all times except when specific permission is given by the Authorized City Representative to shut down such utilities for the purpose of making connections thereto. When such utility service must be taken out of operation, the Design-Builder will notify the Commissioner at least two weeks in advance of such time, and will obtain the Commissioner's approval for such shut down prior to interrupting the service. Interruption of service on all utilities will be kept to an absolute minimum, and the Commissioner will have the right to require the Design-Builder to perform Work which occasions such interruptions in stages in order to reduce time of each interruption. Interruptions in electrical services and the length of services outage will be kept to a minimum and in any case service must be placed in operation prior to sunset of the same day.
- (m) The Design-Builder must take the utmost care in construction operations such as trenching, jacking of pipe and casing, excavations of all types, grading and movement of vehicles over and around FAA facilities, equipment and structures. All such facilities are critical to the operation of the air traffic control function of the Airport. Failure of these facilities due to construction activity would be dangerous. The FAA regards the prospect of this event with the utmost gravity. IT MUST NOT HAPPEN.

- (n) Any cable or other existing utility lines that is damaged during the performance of this Contract must be repaired immediately by the Design-Builder, under the Commissioner's direction and at the Design-Builder's expense. During the period of time that the above types of cables or utilities are out of service due to the Design-Builder's operations, all Work must be suspended unless otherwise directed by the Commissioner. The Commissioner may order, in writing, the Design-Builder to halt all operations until service is restored. The Design-Builder will not be allowed to make claims for extra costs or time extensions due to stoppages of the Work based on the Commissioner's order.
- (o) Open trenches and excavations at the construction site must be prominently marked with barricades and lighted with flashing or steady burning red or yellow obstruction lighting as directed by the Commissioner and of a type acceptable to the Commissioner. The lighting must remain on twenty-four hours a day, seven days a week. Under no circumstances are flare pots to be used.
- (p) The Design-Builder must provide and maintain lighted barricades and all signs required to control construction traffic. The exact location and spacing of all barricades will be determined by the Commissioner. Lights on barricades must be double faced or omnidirectional with flashing red lights.
- (q) All the Work under this Contract is in restricted areas. The Design-Builder cannot cross any active runways or taxiways to deliver materials or workers without escorts and expressed permission of the Commissioner. The Design-Builder's attention is called to the fact that access to certain contract areas may be limited and/or refused for limited periods of time. The Design-Builder must cooperate with Airport authorities to keep the Airport in operation.
- (r) No requirements of this Contract with respect to precautions required or omitted will be deemed to limit or impair any obligations assumed by the Design-Builder under or in connection with this Contract. The Design-Builder must at all times maintain adequate protection to safeguard aircraft, the public, and all persons engaged in the Work without interference with aircraft, the public, and maintenance or operations of the Airport.
- (s) Notwithstanding anything to the contrary contained in the Contract Documents, the Design-Builder and all Subcontractors, material suppliers, laborers, invitees and all other persons under the control of the Design-Builder must immediately comply, strictly and faithfully, with any and all rules, regulations and directions which the Commissioner, from time to time, issues during the life of this Contract with regard to safety, security, maintenance, and operation of the Airport.
- (t) Design-Builder must use Airport Barricades as shown on the Contract Drawings to prevent Aircraft from entering construction areas.
- (u) All cranes or booms used for construction Work must be lowered to ground level during all hours of darkness and during all daylight hours when the aircraft ceiling is below the minimums specified in the FAA 7460 airspace study response letter and moved four hundred (400) feet from the runway centerline, and one hundred sixty-one (161) feet from the taxiway centerline, and aprons as directed. The Design-Builder must lower any cranes or booms when notified by Airport Operations personnel.
- (v) For any work on the airfield, the Design-Builder must furnish aircraft warning flags, colored orange and white, in two sizes, one size 2' x 3' for hand use, and one size 3' x 5'. Each separate group or

individual in all work areas, regardless of whether or not near runways, taxiways or aprons, must display a flag which must be maintained vertical at all times. Each truck or other piece of equipment of the Design-Builder must have attached to it, in a vertical and clearly visible position, a warning flag of the larger size.

- (w) Attention must be given to reduce the noise of heavy 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 in accordance with ordinances of the City and orders of the Commissioner. The discharge of oily, greasy and/or chemical materials or Hazardous Materials into waterways or City sewers will not be permitted.
- (x) The Design-Builder must establish a proactive Foreign Object Debris (FOD) Program including monitoring the Work Site on a continuous basis to prevent FOD from entering the AOA.
- (y) The Design-Builder acknowledges the importance of fully complying with the requirements of this section in order to protect aircraft and human life, on or off the ground. Failure on the part of the Design-Builder to perform the work in accordance with the provisions of this section and to enforce same with regard to all subcontractors, material men, laborers, invitees and all other persons under the Design-Builder's control is an event of default.

13.6. Parking Restrictions

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

13.7. Construction Notices to Federal Aviation Administration

- a. The City will submit a preliminary Federal Aviation Administration Form 7460-1.
- b. The Design-Builder must cooperate with the City in the preparation and filing of the final Federal Aviation Administration FAA Form 7460-1 including the heights and locations of equipment to be used for the construction.
- c. The Design-Builder will submit the final Federal Aviation Administration, FAA Form 7460-1, required for notice of proposed construction, including heights and locations of equipment to be used for the construction on or near an airport under Part 77, of the "Regulations of the Federal Aviation Administration" on or before the date of the Notice To Proceed.
- d. The City will also file with the Federal Aviation Administration on or before the date of the Notice To Proceed, a notice advising the exact date of commencement of Work.
- e. Upon receipt of the Notice to Proceed, it is the Design-Builder's responsibility to obtain from the Commissioner a copy of the Federal Aviation Administration's acknowledgment of the filing of FAA Form 7460-1 and a copy of the Work commencement date advisory notice aforesaid. No Work will

be performed by the Design-Builder until it is in receipt of the foregoing documents, unless otherwise allowed by the Commissioner.

13.8. General Civil Rights (Airport and Airway Improvement Act of 1982, Section 520)

Design-Builder agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Design-Builder from the bid solicitation period through the completion of the Work. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

ARTICLE 14. COMPLIANCE WITH ALL LAWS

14.1. General

The Design-Builder must at all times observe and comply, and will cause its Subcontractors to observe and comply, with all applicable federal, state, county and municipal laws, statutes, ordinances, rules, regulations, codes, and executive orders, in effect now or later and as amended, which may in any manner affect the performance of the Work, whether or not they appear in the Contract Documents.

Provision(s) required by law ordinances, rules, regulations, or executive orders to be inserted in the Contract are deemed inserted in the Contract, whether or not they appear in the Contract

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

14.2. Certification of Compliance with All Laws

By entering into this Contract with the City, Design-Builder certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet City requirements and have not violated any City or sister agency policy, codes, state, federal, or local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time Design-Builder becomes aware of such information, it must immediately disclose it to the City.

14.3. Human Rights

14.3.1. Federal Affirmative Action

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

Design-Builder must comply with The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1988), as amended. Attention is called to: Exec. Order No. 11,246,30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Exec. Order No. 11,375,32 Fed. Reg. 14,303 (1967) and by Exec.

Order No. 12,086,43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 61 01-61 06 (1988); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Americans with Disabilities Act, 42 U.S.C. sec. 12102 et seq.; and 41 C.F.R. Part 60 et seq. (1990); and all other applicable federal laws, rules, regulations and executive orders.

14.3.2. Civil Rights Act of 1964, Title VI, Compliance With Nondiscrimination Requirements

During the performance of this contract, the Design-Builder, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

14.3.2.1. Compliance with Federal Nondiscrimination Requirements

The Design-Builder will comply with federal nondiscrimination laws, regulations, and authorities, as they may be amended from time to time ("Acts and Regulations"), which include:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination under Title VI includes discrimination because of limited English proficiency (LEP). (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, religion, color, national origin, or sex in any activity carried out with a grant from the FAA).

14.3.2.2. Non-discrimination

The Design-Builder, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Design-Builder will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21 (Nondiscrimination in Federally-Assisted Programs of the US Department of Transportation).

14.3.2.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations, either by competitive bidding, or negotiation made by the Design-Builder for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Design-Builder of the Design-Builder's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

14.3.2.4. Information and Reports

The Design-Builder will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or applicable federal agency (e.g. Federal Aviation Administration, Federal Highway Administration, Federal Transit Authority, Transportation Security Administration, Department of Housing and Urban Development, etc.) providing funding to the City department(s) on this contract to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Design-Builder will so certify to the sponsor or the federal agency, as appropriate, and will set forth what efforts it has made to obtain the information.

14.3.2.5. Sanctions for Noncompliance

In the event of a Design-Builder's noncompliance with the Non-discrimination provisions of this contract, the City will impose such contract sanctions as it or the relevant federal funding agency may determine to be appropriate, including, but not limited to:

- (a) Withholding payments to the Design-Builder under the contract until the Design-Builder complies; and/or
- (b) Cancelling, terminating, or suspending a contract, in whole or in part.

14.3.2.6. Incorporation of Provisions

The Design-Builder will include the provisions of above paragraphs 14.3.2.1, "Compliance With Regulations" through 14.3.2.6 "Incorporation of Provisions" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Design-Builder will take action with respect to any

subcontract or procurement as the sponsor or the applicable federal agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Design-Builder becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Design-Builder may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Design-Builder may request the United States to enter into the litigation to protect the interests of the United States.

14.3.3. Other Non-Discrimination Requirements

14.3.3.1. Illinois Human Rights Act

14.3.3.1.1. Generally

Design-Builder must comply with the Illinois Human Rights Act, 775 ILCS 5/1-1 01 et seq., as amended and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 44 Ill. Admin. Code 750 Appendix A, and as further described below.

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

14.3.3.1.2. State of Illinois Duties of Public Contractors (44 Ill. Admin. Code 750 et seq.)

Design-Builder shall comply with its obligations for public contractors under state law. These rules require that Design-Builder examine all its job classifications to determine whether minorities or women are underutilized, and if underutilization exists in any job classification, the Design-Builder must take appropriate affirmative action. 44 Ill. Admin. Code 750.110. Underutilization means "having fewer minority/female workers in a particular job classification than would reasonably be expected by their availability. 44 Ill. Admin. Code 750.120.

When required by the state rules, contractors shall develop and implement written affirmative action plans to overcome underutilization of minorities and/or women, including, at minimum, a description of the contractor's workforce analysis and goals and timetables for recruitment efforts, per 44 Ill. Admin. Code 750.130. Contractors shall also state in all solicitations that all applicants be afforded equal employment opportunity without discrimination ("because of race, color, religion, sex, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status, order of protection status or unfavorable discharge from military service," 44 Ill. Admin. Code 750.150), and advise in writing their personnel, referral sources, and labor organizations of the contractor's obligations under state law and any affirmative action plan.

14.3.3.1.3. State of Illinois Equal Employment Opportunity Clause

In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause or the Illinois Human Rights Act, the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

- a) That Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, order of

protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service; and, further, that he or she will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.

- b) That, if Contractor hires additional employees in order to perform this contract or any portion of this contract, Contractor will determine the availability (in accordance with 44 Ill. Admin. Code Part 750) of minorities and women in the areas from which Contractor may reasonably recruit and Contractor will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.
- c) That, in all solicitations or advertisements for employees placed Contractor or on Contractor's behalf, Contractor will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service.
- d) That Contractor will send to each labor organization or representative of workers with which Contractor has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and 44 Ill. Admin. Code Part 750. If any labor organization or representative fails or refuses to cooperate with the Contractor in Contractor's efforts to comply with the Act and this Part, the Contractor will promptly notify the Illinois Department of Human Rights and the City and will recruit employees from other sources when necessary to fulfill its obligations under the contract.
- e) That Contractor will submit reports as required by 44 Ill. Admin. Code Part 750, furnish all relevant information as may from time to time be requested by the Illinois Department of Human Rights or the City, and in all respects comply with the Illinois Human Rights Act and 44 Ill. Admin. Code Part 750.
- f) That Contractor will permit access to all relevant books, records, accounts and work sites by personnel of the City and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights's Rules and Regulations.
- g) That Contractor will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed, so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by subcontractors; and further it will promptly notify the City and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply with the provisions. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

14.3.3.2. Chicago Human Rights Ordinance MCC Ch. 2-160

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

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

14.3.3.3. City of Chicago Equal Employment Opportunity Goals MCC 2-92-390

The City has established by ordinance equal employment opportunity goals for construction projects with an estimated contract value of \$100,000 or more. The City's yearly goals, as a percentage of construction aggregated work hours per category of worker, are as follows:

- (a) 25% by minority journeyworkers and apprentices;
- (b) 7% by women journey workers and apprentices;
- (c) 40% by minority laborers; and
- (d) 10% by women laborers.

The Contractor is encouraged to meet or exceed these goals. Contractor shall also comply with the State of Illinois equal employment opportunity requirements, as set forth above.

14.3.3.4. Business Enterprises Owned by People With Disabilities (BEPD)

Pursuant to MCC 2-92-586, Contractor is strongly encouraged to subcontract with businesses certified as business enterprises owned or operated by people with disabilities ("BEPD") as defined in that section or MCC 2-92-337, and to use BEPD businesses as suppliers.

14.4. Employment of Illinois Laborers on Airport Projects

Design-Builder will use only Illinois Laborers in the performance of this Contract, to the extent: (i) required by the Employment of Illinois Laborers on Public Works Projects Act, 30 ILCS 570/0.01 et.seq as amended from time to time and; (ii) otherwise permitted by law.

14.5. State Energy Conservation Plan

Design-Builder will comply with all standards and policies relating to energy efficiency and energy conservation plans issued by the State of Illinois in compliance with the Energy Policy and Conservation Act (Public Law 94-163), which are incorporated in this agreement by reference.

14.6. Other City Ordinances and Policies

14.6.1. Economic Disclosure Statement and Affidavit and Appendix A ("EDS")

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

Contractors must complete an online EDS prior to the Bid Opening Date. Contractors are responsible for notifying the City and updating their EDS any time there is a change in circumstances that makes any information provided or certification made in an EDS inaccurate, obsolete or misleading. Failure to so notify the City and update the EDS is grounds for declaring the in default, terminating the Contract for default, and declaring the Contractor ineligible for future contracts.

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

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

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

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

14.6.1.2. MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification

The Design-Builder or each joint venture partner, if applicable, must complete the appropriate subsections in the EDS which certify that the Design-Builder or each joint venture partner, its agents, employees, officers and any subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

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

No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct; or (d) has violated MCC Sect. 2-92-610; or (e) has violated any regulation promulgated by the Chief Procurement Officer that includes ineligibility as a consequence of its violation; or (f) has committed, within a 24-month period, three or more violations of Chapter 1-24 of the MCC; or (g) has been debarred by any local, state or federal government agency from doing business with such government agency, for any reason or offense set forth in this section, or substantially equivalent reason or offense, for the duration of the debarment by such government agency.

For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

14.6.1.3. Federal Terrorist (No-Business) List

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

"Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Design-Builder. 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.

14.6.1.4. Governmental Ethics Ordinance 2-156

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

14.6.1.5. Lobbyists

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

14.6.2. Restrictions on Business Dealings

14.6.2.1. Prohibited Interests in City Contracts

No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the work or services to which this Contract pertains is permitted to have any personal interest, direct or indirect, in this Contract. No member of or delegate to the

Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Contract or to any financial benefit to arise from it.

14.6.2.2. Conflicts of Interest

The Design-Builder covenants that it, and to the best of its knowledge, its subcontractors if any, presently have no interest and will not acquire any interest, direct or indirect, in any enterprise, project or contract which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The Design-Builder further covenants that in the performance of the Contract no person having any such interest will be employed, either by Design-Builder or any subcontractor, to perform any work or services under the Contract or have access to confidential information.

If the City determines that the Design-Builder does have such a conflict of interest, the City will notify the Design-Builder in writing, stating the basis for its determination. The Design-Builder will thereafter have 30 days in which to respond with reasons why the Design-Builder believes a conflict of interest does not exist. If the Design-Builder does not respond or if the City still reasonably determines a conflict of interest to exist, the Design-Builder must terminate its interest in the other enterprise, project, or contract. Further, if the City in the reasonable judgment of the CPO or Commissioner determines that any subcontractor's work or services for others conflicts with the work or services to be provided by them, upon request of the City, Design-Builder must require that subcontractor to terminate such other work or services immediately.

If Design-Builder or any subcontractors become aware of a conflict, they must immediately stop work on the activity causing the conflict and notify the City.

If Design-Builder or any subcontractors ("Contracting Parties") assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals, bid specifications for a project, or other procurement solicitation document, the Contracting Parties must not participate, directly or indirectly, as a prime, subcontractor, subconsultant or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Contract or afterwards. The Contracting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Contracting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

14.6.2.3. 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 Design-Builder of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractors Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Design-Builder, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Design-Builder 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 Design-Builder or the date the Design-Builder 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.

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

For purposes of this provision:

"Other Contract" means any agreement entered into between the Design-Builder 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.

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

In addition to the certifications regarding debts owed to the City in the EDS, Design-Builder is subject to MCC Sect. 2-92-380.

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

time specified on the complaint, and debt means a specified sum of money owed to the City for which the period granted for payment has expired.

However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under the contract if one or more of the following conditions are met: the contracting party has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking violation complaints and debts owed to the City and the Contracting party is in compliance with the agreement; or the contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

14.6.4. False Statements

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

14.6.5. MacBride Principles Ordinance, MCC Sect. 2-92-580

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

If this contract was let by a competitive bidding process as set forth in the Municipal Purchasing Act for Cities of 500,000 or More Population, in accordance with MCC Sect. 2-92-580 if the primary Contractor conducts any business operations in Northern Ireland, it is hereby required that the Design-Builder will make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

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

14.6.6. City Hiring Plan Prohibitions

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

- (b) Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Design-Builder, either as an employee or as a subcontractor, and from directing Design-Builder to hire an individual as an employee or as a Subcontractor. Accordingly, Design-Builder must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Design-Builder under this Contract are employees or Subcontractors of Design-Builder, not employees of the City of Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Design-Builder.
- (c) Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Contract, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.
- (d) In the event of any communication to Design-Builder by a City employee or City official in violation of paragraph B above, or advocating a violation of paragraph C above, Design-Builder will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Contract. Design-Builder will also cooperate with any inquiries by OIG Hiring Oversight.

14.6.7. Inspector General

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Ch. 2-56. Design-Builder understands and will abide by all provisions of MCC Ch. 2-56. All subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

14.6.8. Duty to Report Corrupt Activity

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

14.6.9. Electronic Mail Communication

Electronic mail communication between Design-Builder and City employees must relate only to business matters between Design-Builder and the City.

14.6.10. EDS Update Obligation

Design-Builder is required to notify the City and update the EDS whenever there is a change in circumstances that makes any certification or information provided in an EDS inaccurate, obsolete or misleading. Failure to notify the City and update the EDS is grounds for declaring the Design-Builder in default, termination of the Contract for default, and declaring that the Design-Builder is ineligible for future contracts.

14.6.11. Wheel Tax (City Sticker)

Design-Builder must pay all Wheel Tax required by Chapter 3-56 of the MCC, as amended from time to time. Design-Builder should take particular notice of MCC 3-56-020 and MCC 3-56-125 which relate to payment of the tax for vehicles that are used on City streets or on City property by City residents. For the purposes of Chapter 3-56, any business that owns, leases or otherwise controls a place of business within the City wherein motor vehicles or semi-trailers are stored, repaired, serviced, or loaded or unloaded in connection with the business is also considered to be a City resident.

14.6.12. Safety Enhancing Vehicle Equipment Contracting (Section 2-92-597 of the Chicago Municipal Code):

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

"Commissioner of 2FM" means the City's Commissioner of Fleet and Facility Management.

"Conventional cab" means a large vehicle configuration in which the driver is behind the front axle and the engine is in front of the axle under a discrete hood.

"Convex mirrors" means wide-angle mirrors that enable the operator of a large vehicle to see along the left and right sides of the vehicle by allowing a view of all points on an imaginary horizontal line which is: (i) three feet above the road; and (ii) one foot outside the plane defined by the outer face of the wheels.

"Crossover mirror" means a fender-mounted or hood-mounted mirror that enables the operator of a large vehicle with a conventional cab to see: (i) any person or object at least three feet tall passing one foot in front of the vehicle; and (ii) the area from the front bumper to where direct vision is possible.

"Large vehicle" means any motor vehicle with a gross vehicle weight rating exceeding 10,000 pounds, except an ambulance, fire apparatus, low-speed vehicle with maximum speed under 15 mph, or agricultural tractor.

"Lateral protective device" or "vehicle side guard" means an apparatus installed between the front and rear wheels of a large vehicle that is designed to prevent road users from falling underneath the vehicle.

"Subcontractor" means any person that enters into any tier subcontract to perform work on this Contract.

"Volpe side guard standard" means the United States Department of Transportation's Volpe side guard standard published and referred to as US DOT Standard DOT-VNTSC-OSTR-16-05, as amended; or a functionally equivalent national vehicle side guard standard, as determined by the Commissioner of 2FM.

2. Safety Enhancing Requirements. Design-Builder and any Subcontractor must comply with MCC 2-92-597. Design-Builder and any Subcontractor must retrofit large vehicles used in the performance of the contract, in accordance with the Phase-In Period provided below, with:

(A) Lateral protective devices. This requirement shall be considered satisfied if: (i) the vehicle is equipped with vehicle side guards in accordance with the requirements of the Volpe side guard standard; or (ii) the vehicle is so designed or equipped at the side that, by virtue of its shape and characteristics, its component parts can be regarded as replacing or functioning as vehicle side guards in accordance with the Volpe side guard standard; or (iii) the vehicle cannot be retrofitted with lateral protective devices as attested by the contractor or the subcontractor in a statement accompanied by certification from two manufacturers of such devices.

(B) Left and right side convex mirrors; and

(C) At least one crossover mirror on the passenger side.

3. Phase-In Period. Except when a Contractor or a Subcontractor is granted a waiver pursuant to MCC 2-92-597(g), the Safety Enhancing Requirements set forth above shall apply to:

(A) one-fourth of a Contractor's or a Subcontractor's large vehicles used in the performance of the Contract on or after July 1, 2018 but before July 1, 2019;

(B) one-half of a Contractor's or a Subcontractor's large vehicles used in the performance of the Contract on or after July 1, 2019 but before July 1, 2020;

(C) three-fourths of a Contractor's or a Subcontractor's large vehicles used in the performance of the Contract on or after July 1, 2020 but before July 1, 2021;

(D) all of a Contractor's or a Subcontractor's large vehicles used in the performance of the Contract on or after July 1, 2021.

4. Compliance. Design-Builder shall submit a written compliance plan to the Commissioner of 2FM with respect to compliance with MCC 2-92-597 within 14 days following the notice to proceed or the placing of the first order under the contract, as applicable.

Every twelve-month period following the notice to proceed or the placing of the first order under the contract, as applicable, or when requested by the Commissioner of 2FM, Design-Builder must submit to the Commissioner of 2FM, in a form and manner provided by the CPO, a report that includes the following:

(A) the number of large vehicles used in the performance of the Contract by Design-Builder and any Subcontractor;

(B) the number of large vehicles used in the performance of the Contract by Design-Builder and any Subcontractor that are retrofitted with safety enhancing equipment as required as specified above and MCC 2-92-597(b);

(C) one or more photographs of each large vehicle used in the performance of the Contract by Design-Builder and any Subcontractor that is retrofitted with required safety enhancing equipment as specified above and set forth in MCC 2-92-597(b). The photographs must show the large vehicle's license plate number with the safety enhancing equipment fitted on the vehicle; and

(D) a certification that Design-Builder and any Subcontractor in the contract have met the requirements MCC 2-92-597 and the terms of the contract specified pursuant to that section.

Design-Builder and any Subcontractors may apply to the CPO for an annual waiver from the requirements of MCC 2-92-597. See MCC 2-92-597(g).

5. Enforcement. The CPO or Commissioner of 2FM is authorized to inspect or to have inspected any large vehicle used in the performance of this Contract in order to ensure compliance with Safety Enhancing Equipment requirements and MCC 2-92-597.

Notice: In addition to other remedies provided by law or specified in the Contract, any person who knowingly makes a false statement of material fact to any city agency with respect to compliance with any contract requirements specified pursuant to MCC 2-92-597 or rules promulgated thereunder shall be fined not less than \$1,000.00 nor more than \$5,000.00 for each such false statement.

14.6.13. Participation By Other Local Government Agencies

If Design-Builder consents, other local government agencies may be eligible to participate in this Contract pursuant to the terms and conditions of this Contract if such agencies are authorized, by law or their governing bodies, to execute such purchases, and if such authorization is allowed by the Chief Procurement Officer, if such purchases have no net adverse effect on the City and result in no diminished services from the bidder to the City's user departments pursuant to such purchases. Examples of such Local Government Agencies are: Board of Education, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier and Exposition Authority (McCormick Place, Navy Pier), and the Municipal Courts. Said purchases shall be made upon the issuance of a purchase order directly from the Local Government Agency. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

14.6.14. Clean Diesel Fleet (Section 2-92-595 of the Chicago Municipal Code)

If this Contract is for construction, demolition, restoration, repair, renovation, environmental remediation, or environmental abatement of any building, structure, tunnel, excavation, roadway, bridge, transit station, or parcel of land and the estimated value of this Contract is \$2,000,000 or more:

- a) The Design-Builder must comply with the Clean Diesel Contracting Ordinance, Section 2-92- 595 of

the Municipal Code of Chicago.

- b) The Design-Builder and any Subcontractor(s) must utilize Ultra Low Sulfur Diesel Fuel (ULSD) for any heavy-duty diesel-powered vehicle, non-road vehicle or non-road equipment used in the performance of the Contract.
- c) The Design-Builder and any Subcontractor(s) must minimize idling of motor vehicles and non- road vehicles used in the performance of the Contract during periods of inactivity, and must comply with the anti-idling requirements imposed by any applicable federal, state, or local law.
- d) The Design-Builder and any Subcontractor(s) may not use any of the following vehicles and equipment in the performance of the contract:
 - 1) any heavy-duty diesel vehicle not meeting or exceeding the US EPA's emission standards for heavy-duty diesel vehicles for the 1998 engine model year, unless such vehicle is fitted with a verified diesel emission control retrofit device; or
 - 2) any non-road vehicle or non-road equipment not meeting or exceeding the US EPA's Tier 1 Non-Road Diesel Standards, unless such vehicle or equipment is fitted with a verified diesel emission retrofit device.
- e) Any heavy-duty diesel vehicles, non-road vehicles, and non-road equipment used in the performance of this Contract must incorporate such engine or retrofit technology so that the Design-Builder, through such engine or retrofit technology used directly by Design-Builder and all subcontractors, shall have a minimum of 3.0 clean fleet score per a reporting period, as calculated by using the methodology described in MCC subsection 2-92-595(c)(5). Design-Builder may exclude from the calculation of the clean fleet score up to fifty percent of all of the heavy-duty diesel vehicles, non-road vehicles and non-road equipment used in the performance of the Contract during a reporting period that are owned or leased by any firm that the CPO has granted a clean fleet score annual waiver certificate pursuant to MCC subsection 2-92-595 (f). However, pursuant to MCC subsection 2-92-595(b)(6), if this Contract is advertised after January 1, 2020, the minimum clean fleet score is increased to 4.0, and Design-Builder may exclude from the calculation up to only twenty five percent of vehicles owned or leased by a firm that has received a clean fleet score waiver certificate instead of fifty percent.
- f) The City may conduct an audit of Design-Builder or inspect any vehicle or equipment used in the performance of the Contract to ensure compliance with the requirements specified above. In the event that Design-Builder or any Subcontractor fails to utilize ULSD or fails to minimize idling or comply with anti-idling requirements, Design-Builder will be subject to liquidated damages of \$5,000 per day for each violation and each day of noncompliance will be a separate violation; provided, however, the damages will not exceed \$50,000 for any one vehicle or piece of equipment, as specified in Section 2-92-595(e) of the Municipal Code of Chicago. Such liquidated damages are imposed not as a penalty but as an estimate of the damages that the City will sustain from delay in completion of the project and inspection and inspection and other enforcement costs, as well as the resultant damages to the public health of its citizens, which damages by their nature are not capable of precise proof. The City is authorized to withhold and deduct from monies otherwise payable to the contractor the amount of liquidated damages due to the City.

Design-Builder understands that pursuant to Section 2-92-595(e)(6) of the Municipal Code of Chicago, any person knowingly making a false statement of material fact to any City department with respect to compliance with the contract provisions specified in Section 2-92-595(e) of the

Municipal Code of Chicago may be fined not less than \$1,000 or more than \$5,000 for each statement.

14.6.15. Policy Prohibiting Sexual Harassment (Section 2-92-612 of the Chicago Municipal Code)

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

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

“Contractor” means the person to whom a contract is awarded.

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

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

Design-Builder shall, as prescribed by the Chief Procurement Officer, attest by affidavit that Design-Builder has a written policy prohibiting sexual harassment that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment; and (iii) the legal recourse available for victims of sexual harassment. Design-Builder's affidavit is attached hereto in the Exhibit titled “Sexual Harassment Policy Affidavit”.

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

14.6.16. Policy on Non-Disclosure of Salary History (Section 2-92-385 of the Chicago Municipal Code)

This section applies if this Contract was advertised on or after August 25, 2018.

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

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

“Contractor” means the person to whom a contract is awarded.

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

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

Contractor’s affidavit is included in Appendix C to Contractor’s Economic Disclosure Statement.

If Contractor violates the above requirements, Contractor may be deemed ineligible to contract with the City; any contract, extension, or renewal thereof awarded in violation of the above requirements may be voidable at the option of the City. Provided, however, that upon a finding of a violation by Contractor, no contract shall be voided, terminated, or revoked without consideration by the Chief Procurement Officer of such action’s impact on the Contractor’s MBE or WBE subcontractors.

14.6.17. Compliance with Environmental Laws and Related Matters

14.6.17.1. Definitions

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

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

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

Environmental Law: An Environmental Law is any Law that in any way, directly or indirectly, in whole or in part, bears on or relates to the environment or to human health or safety. A non-exhaustive list of Environmental Laws includes without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. 5101, *et seq.*, the Clean Air Act, 42 U.S.C. 7401, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. 651, *et seq.*, the

Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, the Illinois Occupational Safety and Health Act, 820 ILCS 219/1, *et seq.*, Chapters 7-28 and 11-4 of the Chicago Municipal Code, and all related rules and regulations.

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

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

14.6.17.2. Joint Ventures

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

14.6.17.3. Compliance With Environmental Laws

As part of or in addition to its obligation to observe and comply with all applicable laws, Design-Builder must observe and comply with all applicable Environmental Laws and ensure that all Subcontractors observe and comply with all applicable Environmental Laws.

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

14.6.17.4. Costs

Any cost arising directly or indirectly, in whole or in part, from any noncompliance, by Design-Builder or any Subcontractor, with any Environmental Law, will be borne by the Design-Builder and not by the City. This includes, but is not limited to, any cost associated with removal of waste or other material from a facility lacking any required permit. No provision of this Contract is intended to create or constitute an exception to this provision.

14.6.17.5. Proof of Noncompliance; Authority; Cure

Any adjudication, whether administrative or judicial, against Design-Builder or any Subcontractor, for a violation of any Environmental Law, is sufficient proof of noncompliance, and therefore of an event of default, for purposes of this Contract.

Any citation issued to/against Design-Builder or any Subcontractor, by any government agent or entity, alleging a violation of any Environmental Law, is sufficient proof of noncompliance for purposes of this Contract, and therefore of an event of default, if the citation contains or is accompanied by, or the City otherwise obtains, any evidence sufficient to support a reasonable conclusion that a violation has occurred.

Any other evidence of noncompliance with any Environmental Law is sufficient proof of noncompliance for purposes of this Contract, and therefore of an event of default, if the evidence is sufficient to support a reasonable conclusion that noncompliance has occurred.

The CPO shall have the authority to determine whether noncompliance with an Environmental Law has occurred, based on any of the foregoing types of proof. Upon determining that noncompliance has occurred, s/he may in his/her discretion declare an event of default and may in his/her discretion offer Design-Builder an opportunity to cure the event of default, such as by taking specified actions, which may include without limitation ceasing and desisting from utilizing a Subcontractor.

The CPO may consider many factors in determining whether to declare an event of default, whether to offer an opportunity to cure, and if so any requirements for cure, including without limitation: the seriousness of the noncompliance, any effects of the noncompliance, Design-Builder's and/or Subcontractor's history of compliance or noncompliance with the same or other Laws, Design-Builder's and/or Subcontractor's actions or inaction towards mitigating the noncompliance and its effects, and Design-Builder's or Subcontractor's actions or inaction towards preventing future noncompliance.

14.6.17.6. Copies of Notices and Reports; Related Matters

If any Environmental Law requires Design-Builder or any Subcontractor to make, submit or file any non-Routine notice or report of any kind, to any Environmental Agency or other person, including without limitation any agency or other person having any responsibility for any type of emergency response activity, then Design-Builder must deliver a complete copy of the notice or report (or, in the case of legally required telephonic or other oral notices or reports, a comprehensive written summary of same) to the Law Department within 24 hours of making, submitting or filing the original report.

Additionally, to the extent not already achieved by Design-Builder's compliance with this paragraph 3.3.10.6 and paragraph 3.3.10.8, Design-Builder must notify the Commissioner of the Department, within 24 hours of learning of any of the following:

- (i) any release, suspected release, or threatened release of any waste or other material relating to the work performed under the Contract;
- (ii) any notice of any kind received by Design-Builder, any Subcontractor, or any employee or agent of Design-Builder or any Subcontractor, from an Environmental Agency or any other person, of or relating to any release, suspected release, or threatened release of any waste or other material relating to the work performed under the Contract.

This notification must be in writing, must be submitted by a fast method such as email, and must include, to the best of Design-Builder's knowledge at the time of submittal: the types and amounts of the waste or other material at issue; the location; the cause and any contributing factors; all actions taken, being taken, and intended to be taken by Design-Builder and any Subcontractors; and a copy of any notice received by Design-Builder, any Subcontractor, or any employee or agent of Design-Builder or any Subcontractor. Design-Builder must also provide written updates to the Commissioner by email or other method as indicated by the Commissioner whenever Design-Builder

becomes aware of information that is different from or additional to the information provided in the initial notification.

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

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

14.6.17.7. Requests for Documents and Information

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

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

14.6.17.8. Environmental Claims and Related Matters

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

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

14.6.17.9. Preference for Recycled Materials

To the extent practicable and economically feasible and to the extent that it does not reduce or impair the quality of any work or services, Design-Builder 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.

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

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

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid 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, Design-Builder's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Contract, constitutes a breach of and an event of default under this Contract, for which the opportunity to cure, if curable,

will be granted only at the sole discretion of the CPO. Such breach and default entitles the City to all remedies under the Contract, at law or in equity.

This section does not limit the Design-Builder'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 Design-Builder's eligibility for future contract awards.

ARTICLE 15. ADDITIONAL TERMS AND CONDITIONS

15.1. Confidentiality

15.1.1. Generally.

- (a) All of the reports, information, Deliverables, findings, information or data in any form prepared, assembled, encountered by, or provided to the Design-Builder under the Agreement (collectively "Project Data") are property of the City and are confidential, and except as may be specifically authorized in this Agreement or required by law, the Design-Builder must not make such Project Data available to any party without the prior written consent of the City.
- (b) In addition, the Design-Builder must not, without the prior written consent of the City, issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, must not disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner..
- (c) If Design-Builder is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Design-Builder's possession by reason of this Agreement, Design-Builder must immediately give notice to the Commissioner, CPO and the Corporation Counsel for the City in sufficient time for the City to attempt to quash, or take other action in relation to, the subpoena with the understanding that the City will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. Design-Builder, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

- 15.1.2. Subcontractors and Staff. Design-Builder must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions contained in this Agreement. All Subcontracts or purchase orders entered into by the Design-Builder, with parties providing material, labor or services to complete the Work, must contain the language of this section. If the Design-Builder fails to incorporate the required language in all Subcontracts or purchase orders, the provisions of this section are deemed incorporated in all Subcontracts or purchase orders. The requirements of this section will survive expiration or termination of this Agreement.

15.1.3. Subcontractor Airport Sensitive Security Information. Design-Builder acknowledges that Project Data may contain information vital to the security of the airport ("Airport SSI") and may be subject to the requirements of 49 CFR Parts 15 and 1520. If Design-Builder fails to safeguard the confidentiality of Airport SSI, Design-Builder is liable for the reasonable costs of actions taken by the City, the airlines, the Federal Aviation Administration (FAA), or the Transportation Security Administration (TSA) that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements, procurement and installation of security devices, and posting of guards.

15.2. Intellectual Property

15.2.1. Ownership of Documents

Except as otherwise agreed to in advance by the Commissioner in writing, all Deliverables, data, findings or information in any form prepared or provided by Design-Builder or provided by the City to Design-Builder under this Contract are property of the City, including all copyrights inherent in them or their preparation. During performance of its Services, Design-Builder is responsible for any loss or damage to the Deliverables, data, findings or information while in Design-Builder's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at Design-Builder's expense. If not restorable, Design-Builder must bear the cost of replacement and of any loss suffered by the City on account of the destruction. Notwithstanding the foregoing, Design-Builder shall retain all rights to its standard details and specifications and proprietary software, and nothing in this section shall be construed to be a transfer of rights which are not owned by Design-Builder.

15.2.2. Copyright Ownership and other Intellectual Property

Design-Builder and the City intend that, to the extent permitted by law, the Deliverables to be produced by Design-Builder at the City's instance and expense under this Contract are conclusively considered "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 et seq., and that the City will be the sole copyright owner of the Deliverables and of aspects, elements and components of them in which copyright can subsist, and which are owned and transferable by, and of all rights to apply for copyright registration or prosecute any claim of infringement. To the extent that any Deliverable does not qualify as a "work made for hire", Design-Builder hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyright and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Contract and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Notwithstanding the foregoing, Design-Builder shall retain all rights to its standard details and specifications and proprietary software, and nothing in this section shall be construed as a transfer of rights, which are not owned by Design-Builder. Design-Builder shall have no liability or duty whatsoever for any modification or change of the Deliverables or work, without Design-Builder's direct involvement and consent.

Contractor will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Design-Builder warrants to the City, its successors and assigns, that, on the date of delivery, except as expressly stated otherwise in writing to the Commissioner or before that date: (a) Design-Builder will be the lawful owner of good and marketable title in and to the copyrights for the

Deliverables it prepared, (b) Design-Builder will have the legal rights to fully assign the copyrights, (c) Design-Builder will not assign any copyrights and will not grant any licenses, exclusive or nonexclusive, to any other party (except pursuant to (3) below), (d) Design-Builder is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables, (e) the Deliverables will be complete, entire and comprehensive within the standard of performance of this Contract, and (f) the Deliverables will constitute works of original authorship.

15.2.3. Patents

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

15.2.4. Indemnity

Without limiting any of its other obligations under this Contract and in addition to any other obligations to indemnify under this Contract, Design-Builder must, upon request by the City, indemnify, save, and hold harmless the City, and if this Contract is federally funded the Federal Government, and their respective officers, agents, and employees acting within the scope of their original duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Design-Builder of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any Deliverables furnished under the Contract. The Design-Builder is 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.

15.3. Approvals

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

15.4. Modifications to this Agreement

The City may from time to time request changes to the terms and Services of the Agreement. Such changes, including Field Orders for any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the City and Design-Builder, will be incorporated in a written Modification to the Agreement ("Modification"). The City will not be liable for any additional payment absent such written Modification.

15.5. Non-liability of Public Officials

No City of Chicago employee, agent, officer, or official is personally liable to Design-Builder or its Subcontractors, and Design-Builder and its Subcontractors are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Design-Builder or its Subcontractors under this Agreement.

15.6. Governing Law

This Agreement will be governed in accordance with the laws of the State of Illinois, without regard to choice of law principles. The Design-Builder hereby irrevocably submits, and will cause its Subcontractors to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. The Design-Builder irrevocably waives any objection (including without limitation any objection of the laying of venue or based on the grounds of forum non conveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Agreement in the jurisdiction set forth above.

15.7. Service of Process

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

15.8. Joint and Several Liability

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

15.9. Notices

All notices required to be given under this Agreement must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the City or to the Design-Builder at their respective addresses set forth below, as appropriate. If given as provided in this Agreement, such notice is deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The City or the Design-Builder may, from time to time, change the address to which notices will be sent by giving notice to the other party in the manner provided in this subparagraph.

To the City: Chicago Department of Aviation
10510 W. Zemke Circle
Chicago, Illinois 60666
Attn: Commissioner

Copy to: Department of Procurement Services

121 N. LaSalle Street, Suite 806
Chicago, IL 60602
Attn: Chief Procurement Officer

Copy to: Law Department
Aviation, Environmental, Regulatory & Contracts Division
30 North LaSalle Street, Suite 1400
Chicago, IL 60602
Attn: Deputy Corporation Counsel

To the Design-Builder:

15.10. Entire Agreement

The Agreement constitutes the entire understanding and agreement between the Parties to this Agreement and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged in this Agreement. The Agreement must not be modified, amended or in any way altered except by an instrument in writing signed by both of the Parties.

15.11. Severability

If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the Agreement and such invalidity or unenforceability will not affect any other provision of the Agreement, the balance of which will remain in full force and effect; provided, however, that if such provision is deemed invalid or unenforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

15.12. Non-Appropriation of Funds

Pursuant to 65 ILCS 5/8-1-7, any contract for the expenditure of funds made by a municipality without the proper appropriation is null and void. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City has the right to terminate the Agreement and will notify the Design-Builder of that occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments will be made to Design-Builder under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.

15.13. No Waiver

The waiver by either party of any breach of the Agreement will not constitute a waiver as to any succeeding breach.

15.14. Design-Builder's Authority

The Design-Builder represents that its execution of the Agreement is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Design-Builder have been made with complete and full authority to commit the Design-Builder to all terms and conditions of the Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it, attached

hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. If other than a sole proprietorship, Design-Builder must provide satisfactory evidence that the execution of the Agreement is authorized in accordance with the business entity's rules and procedures.

15.15. Counterparts

The Agreement may be executed in any number of counterparts, any of which will be deemed an original.

[EXECUTION PAGE FOLLOWS]

CONTRACT SIGNATURE PAGE

Contract (PO) Number: _____
Specification Number: _____
Design-Builder Name: _____
Total Amount (Value): _____
Fund Chargeable: _____

Design-Builder: _____

By: _____
Signature of President or Authorized Representative

Its:
Title

Attest: _____

State of _____
County of _____

This instrument was acknowledged before me on this _____ day of _____, 2017 by
_____ as President (or other authorized officer) and
_____ as Secretary of _____ (Corporation Name).
(Seal)

Notary Public Signature
Commission Expires: _____

CITY OF CHICAGO

Mayor Date

Comptroller Date

Chief Procurement Officer Date

EXHIBIT A
SCOPE OF SERVICES

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT B
CONTRACT DOCUMENTS

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT C
PROJECT SCHEDULE

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT D
COMPENSATION

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT E
INSURANCE AND BONDING REQUIREMENTS

The Design-Builder shall furnish proof of its ability to provide the bonds and insurance required by the Contract with its Proposal. With respect to the payment and performance bonds, a letter from the Design-Builder's surety affirming the surety's willingness to provide the Design-Builder's bonds is sufficient. With respect to the insurance, either a letter from the Design-Builder's insurer, or a certificate showing that the Design-Builder currently possesses the required coverage, is sufficient.

The insurance requirements for this project are as follows: The Design-Builder must provide and maintain at Design-Builder's own expense, the minimum insurance coverage and requirements specified below, insuring all operations related to the Contract. The insurance must remain in effect from: the date of the notice to proceed until Substantial Completion of the project, during completion of Punch List, as well as any time Design-Builder returns to perform additional work regarding warranties or for any other purpose.

Insurance To Be Provided By the Design-Builder:

The insurance requirements are included in this Exhibit.

Upon approval by the City to award the Project, respectively, which approval shall be designated by a Notice to Proceed from the City to the Design-Builder, and within five (5) days after being given notice of approval of each, the successful Design-Builder must execute and deliver to the City the Performance and Payment Bond in the form included in the Contract Documents, and evidence of the required insurance coverage.

The Performance and Payment Bond shall be in the form provided herein, in the full amount of the Contract Sum, respectively, and shall be security for the faithful performance of the Contract and payment of all persons, firms, or corporations to whom the Design-Builder may become legally indebted for labor, material, facilities or services of any nature, employed or used by it in performing the Work. The current power of attorney for the persons who sign for any surety company shall be attached to such bond. Such power of attorney shall be sealed and certified with a "first hand signature" by an officer of the surety. A facsimile signature will not be accepted by the City. The City reserves the right to approve the surety company.

The failure of the Design-Builder to supply the required Performance and Payment Bond or evidence of the required insurance coverage within five (5) days of notice, or within such extended period as the City may grant based upon reasons determined sufficient by the City, shall constitute a default and the City may either award the Contract to the next lowest responsible Design-Builder or re-advertise for bids. The difference between the amount of its bid and the amount for which a contract for the work is subsequently executed may be charged against the Design-Builder, irrespective of whether the amount thus due exceeds the amount of the bid security. If a more favorable bid is received by re-advertising, the defaulting Design-Builder shall have no claim against the City for a refund. Because of the difficulty of ascertaining the damage caused to the City, such sum shall be considered liquidated damages and shall not constitute a penalty. The election by the City to grant an extension to the period allowed for the Design-Builder to provide an acceptable performance and payment bond and/or evidence of insurance coverage shall not entitle the Design-Builder to an extension of time required to complete the Work.

RIDER ATTACHED

CONTRACTOR'S PERFORMANCE & PAYMENT BOND

Know All Men by these Presents, That we,

Principal, hereinafter referred to as Contractor, and _____, Surety
of the County of Cook and State of Illinois, are held and firmly bound unto the CITY OF CHICAGO in the penal
sum of _____

lawful money of the United States, for the payment of which sum of money, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

Sealed with our seals and dated this ____ day of __, 20____.

The Condition of the Above Obligation is such, that whereas the above bounden Contractor has entered into a
certain contract with the CITY OF CHICAGO, bearing

Contract No. _____ and Specification No. _____ all in conformity with said contract, for,

Furnishing the City of Chicago, DEPARTMENT OF AVIATION, all design, engineering, labor, tools, material, and
equipment required and necessary for the project known as:

* The attached rider is incorporated herein by reference.

Now, if the said Contractor shall in all respects well and truly keep and perform the said contract on its
part, in accordance with the terms and provisions of all of the Contract Documents comprising said contract, and
in the time and manner therein prescribed, and further shall save, indemnify, and keep harmless the City of
Chicago against all loss, damages, claims, liabilities, judgments, costs and expenses which may in anywise accrue
against said City of Chicago, in consequence of the granting of said contract, or which may in anywise result
therefrom, or which may result from strict liability, or which may in anywise result from any injuries to, or death
of, any person, or damage to any real or personal property, arising directly or indirectly from or in connection
with, work performed or to be performed under said contract by said Contractor, its Agents, Employees or
Workmen, assignees, subcontractors, or anyone else, in any respect whatever, or which may result on account
of any infringement of any patent by reason of the materials, machinery, devices or apparatus used in the
performance of said contract, and moreover, shall pay to said City any sum or sums of money determined by the
Purchasing Agent, and/or by a court of competent jurisdiction, to be due said City by reason of any failure or
neglect in the performance of the requirements of said contract, wherefore the said Purchasing Agent shall
have elected to suspend or cancel the same, and shall pay all claims and demands whatsoever, which may
accrue to each and every materialman and subcontractor, and to each and every person who shall be employed
by the said Contractor or by its assignees and subcontractors, in or about the performance of said contract, and
with wages paid at prevailing wage rates if so required by said contract, and shall insure its liability to pay the
compensation, and shall pay all claims and demands for compensation which may accrue to each and every
person who shall be employed by them or any of them in or about the performance of said contract, or which
shall accrue to the beneficiaries or dependents of any such person, under the provisions of the Workers'
Compensation Act, 820 ILCS 305, as amended, and the Workers' Occupational Disease Act, 820 ILCS 310, as

amended (hereinafter referred to as "Acts") then is this obligation to be null and void, otherwise to remain in full force and effect.

And it is hereby expressly understood and agreed, and made a condition hereof, that any judgement rendered against said City in any suit based upon any loss, damages, claims, liabilities, judgements, costs or expenses which may in anywise accrue against said City as a consequence of the granting of said contract, or which may in anywise result therefrom, or which may in anywise result from any injuries to, or death of, any person, or damage to any real or personal property; arising directly or indirectly from, or in connection with, work performed, or to be performed under said contract by said Contractor or its agents, employees or workmen, assignees, subcontractors, or anyone else and also any decision of the Industrial Commission of the State of Illinois; and any order of court based upon such decision, or judgement thereon, rendered' against said City of Chicago in any suit or claim arising under the aforementioned Acts when notice of the pendency or arbitration proceedings or suit shall have been given said Contractor, shall be conclusive against each and all parties to this obligation, as to amount, liability and all other things pertaining thereto.

Every person furnishing material or performing labor in the performance of said contract, either as an individual, as a subcontractor, or otherwise, shall have the right to sue on this bond in the name of the City of Chicago for his use and benefit and in such suit said person as plaintiff, shall file a copy' of .this bond, certified by the party or parties in whose charge this bond shall be, which copy shall be,unless execution thereof be denied under oath; prima facie evidence of the execution and` delivery of the original; provided, that nothing in thus bond contained shall be 'taken to make the City of Chicago liable to any subcontractor, materialman, laborer or to any other person to any greater extent than it would have been liable prior to the enactment of the Public Construction Bond Act, 30 ILCS 550, as amended; provided further, that any person having a claim for labor and materials furnished m the performance of this contract shall have no right of action unless he shall have filed a verified notice of such claim with the Clerk of the City of Chicago within 180 days after the date of the last item of work or the furnishing. Of the last item of materials, and shall have furnished a copy of such verified notice to the contractor within 10 days of the filing of the notice with the City of Chicago. Such claim shall lie verified and shall contain the name and address of the claimant, the business address of the claimant within the State of Illinois, if any, or if the claimant be a foreign corporation having no place of business with the State the principal place of business of said corporation, and in all cases of partnership the names and residences of each. of the partners, the name of the contractor for the City of Chicago, the name of the person, firm or corporation by whom the claimant was employed or to whom such claimant furnished materials, the amount of the claim and a brief description of the public improvement for the construction or installation of which the contract is to be performed. Provided, further that no defect in the notice herein provided for shall deprive the claimant of his right of action under the terms and provisions of this bond unless it shall affirmatively appear that such defect has prejudiced the rights of an interested party asserting the same; provided, further, that no action shall be brought until the expiration of one hundred twenty (120) days after the date of the last item of work or of the furnishing of the last item of material, except in cases where the final settlement between the City of Chicago and the Contractor shall have been made prior to the expiration of the 120 day period in which case action may be taken immediately following such final settlement, and provided, further that no action of any kind shall be brought later than six (6) months after the acceptance by the City of Chicago of the completion of work. Any suit upon this bond shall be brought only in a circuit court of the State of Illinois in the judicial district in which the contract shall have been performed.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of any of the Contract Documents comprising said contract, or to the work to be performed thereunder, shall in anywise affect the obligations on this bond, and it does by waive notice of any such change, extension of time, alteration or addition to the terms of said Contract Documents or to the work.

(COMPANY NAME)

Approved _____, 20____

_____(Seal)
By: President

_____(Seal)
Attest: Secretary

Chief Procurement Officer

_____(Seal)

_____(Seal)

_____(Seal)

_____(Seal)

PRINCIPAL
IF CORPORATION

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

I, _____, a Notary Public in and for the County and State
aforesaid, DO HEREBY CERTIFY that _____ President and
_____ Secretary of the _____
who are personally known to me to be the same persons whose names are subscribed in the foregoing instrument as
such _____ President and _____ Secretary, appeared
before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as
their free and voluntary act, and as the free and voluntary act of the said _____
for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

GIVEN under my hand and Notarial Seal this _____ day of _____ 20 _____

Notary Public

SURETY, IF CORPORATE

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

I, _____, a Notary Public in and for the County and State
aforesaid, DO HEREBY CERTIFY that _____
_____ of the _____ who _____ personally known
to be the same person _____ whose name _____ subscribed in the foregoing instrument as such _____
_____, appeared before me this day in person and acknowledged that _____
signed, sealed and delivered the said instrument of writing as _____ free and voluntary act, and as the free
and voluntary act of the said _____
for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

GIVEN under my hand and Notarial Seal this _____ day of _____ 20 _____

Notary Public

PRINCIPAL
IF INDIVIDUAL

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

I, _____, a Notary Public in and for the County and State
aforesaid, DO HEREBY CERTIFY that _____
who _____ personally known to me to be the same persons whose name _____ subscribed in the foregoing
instrument, appeared before me this day in person and acknowledged that _____ he _____ signed, sealed and delivered the
said instrument of writing as _____ free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____ 20 _____

Notary Public

GRC-180211-26-1

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.

OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

The City has purchased insurance coverage for the City, Design-Builder and eligible Subcontractors of any tier for work performed on the Project. The OCIP will also cover other projects under the OMP.

The City assumes no liability if the limits of coverage provided by the City are inadequate or exhausted. The City's failure to procure any such insurance shall not be deemed to be a breach of the Contract or an event of default and shall not diminish Design-Builder and eligible Subcontractors of any tier's obligation to perform.

The OCIP coverage is only for Work performed on and from the Project Site and operations necessary or incidental to the work performed at the Project Site. Project Site shall mean O'Hare Airport and any other adjacent property owned or acquired by the City or to which the City has been granted easements or rights of access.

While it is the intent of the City to keep the OCIP in force throughout the term of this Project, the City reserves the right to terminate or modify the terms, limits and conditions of the OCIP coverage. To exercise this right, the City shall provide thirty (30) days advance written notice of termination or material modification to Design-Builder and eligible Subcontractors of any tier covered by the OCIP. In the event that the OCIP is terminated in whole or in part by the City or the coverages are reduced below those required by Section II herein Design-Builder and eligible Subcontractors of any tier must be required to obtain replacement or additional coverage as described in Section II herein. In the event that the OCIP expires prior to substantial completion, Design-Builder and eligible Subcontractors of any tier must be required to obtain replacement or additional coverage as described in Section II herein.

Upon Substantial Completion of the Design-Builder's or any Subcontractors of any tier Work, the OCIP coverage for the Design-Builder's or any Subcontractors of any tier Work will be terminated. If the Design-Builder or any Subcontractors of any tier returns to do any work on the Project Site after Substantial Completion of the Project, including warranty or any other repair work, the Design-Builder and any Subcontractors of any tier must procure and maintain the insurance coverages required by Section III and provide certificates of insurance for the coverages to the City, prior to beginning the work.

The furnishing of the OCIP shall in no way be interpreted as relieving the Design-Builder or eligible Subcontractors of any tier of any obligation or responsibility whatsoever under the Contract or otherwise. Design-Builder or eligible Subcontractors of any tier must carry, at their own expense, the insurance required in Section III herein. Design-Builder or eligible Subcontractors of any tier may carry, at their own expense, additional insurance as the Design-Builder and eligible Subcontractors of any tier may deem necessary.

Design-Builder and eligible Subcontractors of any tier shall not include in its base bid price the cost of any insurance to be provided by the City under the City's OCIP described herein.

An OCIP Manual will be provided to the Design-Builder and eligible Subcontractors of any tier that will detail aspects of the OCIP and the reporting requirements. The OCIP Manual will be subject to revisions.

Design-Builder and eligible Subcontractors of any tier agree that the purpose of this section is to provide information and a general understanding of the insurance coverages that will be provided by the City under the OCIP. Design-Builder and eligible Subcontractors of any tier agree that the policies actually procured and their limits of liability, coverage scope and terms, conditions, endorsement and exclusions shall determine the actual scope of coverage provide by and under the OCIP. The City does not covenant that the actual OCIP policies will provide, and conform to, the coverages described herein. In addition, termination of or reduction of coverages under the OCIP arising from loss or reduction in market insurance capacity shall not result in either liability or additional costs to the City.

A. Summary of Insurance coverages to be included in OCIP:

1) Commercial General Liability

Commercial General Liability Insurance will be provided on an "occurrence" form under a master liability policy with the following Limits of Liability, Coverages, and Terms:

(a) Limit of Liability:

\$2,000,000 Combined Single Limit any one occurrence for bodily injury or property damage and \$4,000,000 in the aggregate

(b) Deductible:

Design-Builder and eligible Subcontractors of any tier will be responsible for a deductible charge back per the schedule in the OCIP Project Manual or \$25,000 per claim deductible whichever is less.

Coverage and Terms:

(i) Occurrence Basis;

(ii) Products and Completed Operations for full statute of repose with a term aggregate of \$4,000,000;

(iii) Personal and Advertising Injury Liability \$2,000,000 per occurrence subject to the General Aggregate.

2) Excess

Excess Liability Insurance limits of not less than \$200,000,000 per occurrence and aggregate, excess of Commercial General Liability including Completed Operations.

B. Design-Builder and Subcontractors of any tier Responsibilities:

The Design-Builder and eligible Subcontractors of any tier are required to cooperate with the City or its representatives, and insurance carriers with regard to the administration and operation of the OCIP. The responsibilities of the Design-Builder and eligible Subcontractors of any tier must include, but not be limited to:

(1) Completion of an OCIP enrollment form. Coverage under the OCIP will not be effective for any eligible Subcontractors of any tier until Design-Builder and eligible Subcontractors are enrolled in the OCIP. Design-Builder and eligible Subcontractors of any tier must not begin work at the project site until Design-Builder or eligible Subcontractors have confirmation of enrollment and received a certificate of insurance evidencing coverage under the OCIP and provide copies of insurance declarations page and insurance rating information as described in OCIP Manual.

(2) Complying with applicable construction safety requirements;

(3) Providing necessary contract, operations and insurance information;

- (4) Immediately notifying the City of all Subcontractors of any tier upon award of a subcontract prior to start of Design-Builder or Subcontractor's work;
- (5) Immediately notifying the City when Design-Builder or Subcontractors of any tier provided coverages have been canceled, materially changed, or non-renewed;
- (6) Timely completion of OCIP Forms;

II. INSURANCE TO BE PROVIDED IN EVENT OCIP IS TERMINATED OR REDUCED

Design-Builder must promptly obtain quotations for appropriate replacement insurance coverage as listed below. If such quotations are reasonably acceptable to City, then Design-Builder must promptly bind such replacement coverage. If quotations obtained by Design-Builder are not reasonably acceptable to the City, the Design-Builder will work with the City to identify appropriate cost for replacement insurance coverage that is reasonably acceptable to the City. Except as provided in Section I, the actual documented cost of such replacement insurance will be reimbursed by the City. Also, if replacement insurance is required due to the duration of the Work exceeding the duration of the term for the OCIP for reasons not deemed to be excusable delays as defined by the City, then the cost of such replacement insurance must be at Design-Builder's expense.

Design-Builder will be required to provide copies of their current declaration pages for general liability and umbrella/excess liability policies, if applicable, to verify the rates they are charging. If Design-Builder has insurance policies with deductibles or other loss sensitive programs, they must provide currently dated claim loss runs for those same five years for their general liability and umbrella/excess liability policies and copies of their deductible or program agreement with their insurance carrier(s) to support the calculation of the loss rate and fixed cost (premium) rate being utilized.

A. INSURANCE REQUIRED

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

1) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not be limited to, the following: All premises and operations, products/completed operations (for the full statute of repose following project completion), explosion, collapse, underground, separation of insureds, runway work, defense, contractual liability (not to include endorsement CG 21 39 or equivalent), no exclusion for damage to work performed by Subcontractors, any limitation of coverage for designated premises or project is not permitted (not to include endorsement CG 21 44 or equivalent), and any endorsement modifying or deleting the exception to the Employer's Liability exclusion is not permitted. If a general aggregate limit applies, the general aggregate must apply per project/location and once per policy period; or Design-Builder may obtain separate insurance to provide the required limits which will not be subject to depletion because of claims arising out of any other work or activity of Design Builder. If a general aggregate applies to products/completed operations, the general aggregate limits must apply per project and once per policy period.

The City and other entities required by City must be provided additional insured status with respect to liability arising out of Design-Builder's work, services or operations and completed operations performed on behalf of the City. Such additional insured coverage must be provided on ISO form CG 2010 10 01 and CG 2037 10 01 or endorsement form at least as broad for ongoing operations and completed operations. The City's additional

insured status must apply to liability and defense of suits arising out of Design-Builder's acts or omissions, whether such liability is attributable to the Contactor or to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Design-Builder's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

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

Coverage must include, at a minimum, the coverage described in the Section I or the actual coverage provided by the OCIP whichever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

2) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$200,000,000 per occurrence, or the full per occurrence limits of the policy, or lesser amount as deemed reasonable by City's Risk Manager. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. If a general aggregate limit applies, the general aggregate must apply per project/location. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Coverage must include, at a minimum, the coverage described in the Section I or the actual coverage provided by the OCIP whichever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

B. ADDITIONAL REQUIREMENTS

Evidence of Insurance. Design-Builder must furnish the City, O'Hare Modernization Program, 10510 West Zemke Road, 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Contract, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. Design-Builder must submit evidence of insurance prior to execution of Contract. The receipt of any certificate does not constitute Contract by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Contract. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Design Builder, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Design-Builder must advise all insurers of the Contract provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Design-Builder for liabilities which may arise from or relate to the Contract. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of Design-Builder to comply with required coverage and terms and conditions outlined herein will not limit Design-Builder's liability or responsibility nor does it relieve Design-Builder of the obligation to provide insurance as specified in this Contract. Nonfulfillment of the

insurance conditions may constitute a violation of the Contract, and the City retains the right to suspend this Contract until proper evidence of insurance is provided, or the Contract may be terminated.

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

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

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

Design Builder's Insurance Primary. All insurance required of Design-Builder under this Contract must be endorsed to state that Design-Builder's insurance policy is primary and not contributory with any insurance carrier by the City.

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

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

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

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

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

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

Insurance required of Subcontractors. Design-Builder must name Subcontractor(s) as a named insured(s) under Design-Builder's insurance or Design-Builder will require each Subcontractor(s) to provide and maintain Commercial General Liability and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section II, A, Insurance Required. The limits of coverage will be determined by Design-Builder but be no less than \$5,000,000 per occurrence. Design-Builder must determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section II.A, Insurance Required. Design-Builder is responsible for ensuring that each Subcontractor has named the City as an

additional insured where required and name the City as an additional insured under the Commercial General Liability on ISO form CG 2010 10 01 and CG 2037 10 01 for ongoing operation and completed operations or an endorsement form at least as broad and acceptable to the City. Design-Builder is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Design-Builder must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractors to comply with required coverage and terms and conditions outlined herein will not limit Design-Builder's liability or responsibility.

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

III. INSURANCE TO BE PROVIDED BY DESIGN-BUILDER FOR COVERAGE NOT INCLUDED IN THE OCIP AND INSURANCE TO BE PROVIDED BY DESIGN-BUILDER NOT INSURED BY THE OCIP

The OCIP does not include activities not solely related to the work, services, or operations including but not limited to, home and branch office activities off-site, factory, warehouse or manufacturing facilities or similar place, the interest of vendors, and others who merely supply or transport personnel, materials, parts or equipment or any other items to or from the Project Site.

A. INSURANCE REQUIRED

Design-Builder and Prime Contractor must provide and maintain at Design-Builder and Prime Contractor's own expense, until Contract completion and during the time period following final completion if Design-Builder and Prime Contractor is required to return and perform any additional work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Contract.

Prime Contractor for purposes of the insurance requirements shall mean the person or entity that has been retained directly by the Design-Builder to perform the Work required in this Contract.

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

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work, services, or operations under this Contract and Employers Liability coverage with limits of not less than \$2,000,000 each accident; \$2,000,000 disease-policy limit; and \$2,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: alternate employer and, when applicable, other state endorsement and voluntary compensation. The City must be scheduled as an alternate employer.

Coverage must apply both on and away from the Project Site.

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

2) Commercial General Liability (Primary or Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not be limited to, the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion),

explosion, collapse, underground, separation of insureds, runway work, defense, contractual liability (not to include endorsement CG 21 39 or equivalent), no exclusion for damage to work performed by Subcontractors, any limitation of coverage for designated premises or project is not permitted (not to include endorsement CG 21 44 or equivalent), and any endorsement modifying or deleting the exception to the Employer's Liability exclusion is not permitted. If a general aggregate limit applies, the general aggregate must apply per project/location and once per policy period; or Design-Builder and Prime Contractor may obtain separate insurance to provide the required limits which will not be subject to depletion because of claims arising out of any other work or activity of Design-Builder and Prime Contractor. If a general aggregate applies to products/completed operations, the general aggregate limits must apply per project and once per policy period.

The City must be provided additional insured status with respect to liability arising out of Design-Builder and Prime Contractor's work, services or operations and completed operations performed on behalf of the City. Such additional insured coverage must be provided on ISO form CG 2010 10 01 and CG 2037 10 01 or endorsement form at least as broad for ongoing operations and completed operations. The City's additional insured status must apply to liability and defense of suits arising out of Design-Builder and Prime Contractor's acts or omissions, whether such liability is attributable to the Design-Builder and Prime Contractors or to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Design-Builder and Prime Contractor's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

In addition, DMJM Aviation Partners JV, WSP/Parsons Brinkerhoff, and the Architect/Engineer are to be provided additional insured status.

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

3) Automobile Liability (Primary and Umbrella)

Design-Builder and Prime Contractor must maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. Coverages must include, but not be limited to, the following: ownership, maintenance, or use of any auto whether owned, leased, non-owned or hired used in the performance of the work or devices, both on and off the Project site including loading and unloading. If applicable, coverage extension must include an MCS-90 endorsement where required by the Motor Carrier Act of 1980. The City and other entities required by City are to be named as additional insureds on a primary, non-contributory basis.

Coverage must apply both on and away from the Project Site.

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

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$3,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella

policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. If a general aggregate limit applies, the general aggregate must apply per project/location. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Design-Builder and Prime Contractor may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Professional Liability

(a) Project Professional Liability

The City has purchased a Project Professional Policy covering acts, errors or omissions of the Design Builder, its Design Professionals, and other architects, engineers, construction managers, program managers, project managers, and other professionals, at the City's discretion, related to the Services performed on the Project.

The policy has a limit of liability of \$50,000,000 each claim and policy term aggregate with a deductible of \$350,000 each claim. The policy expires December 31, 2022 and provides five (5) years of extended reporting period. The City of Chicago may, at its option extend the policy past its expiration, terminate the policy prior to expiration or not renew the policy at expiration. If coverage is not extended or if the policy is terminated or not renewed, the Design Builder and each Design Professional must provide evidence of Professional insurance as required in section III.5.(b) herein covering all Services in connection with this Agreement.

The City of Chicago will provide a certificate of insurance to Design Builder and its Design Professionals insured under the policy. Upon extension of the policy, revised certificates of insurance will be issued.

The City of Chicago, as trustee, has established a deductible fund, to satisfy all deductible obligations of the Design Builder and its Design Professionals and other architects, engineers, construction managers, program managers, project managers, and other professionals covered under the Project Professional Liability policy. The City will withhold three quarters (3/4%) of one percent of each pay out to each firm or entity insured under the policy for professional services to fund the deductible obligations. Once all deductible obligations have been satisfied under the policy, the City will refund the remaining proceeds proportionately to each firm or entity in relationship to the amount which each firm or entity contributed.

For purposes of this insurance section, it is understood that professional services includes the following:

- Architect, engineer, land surveyor, landscape architect, construction manager, project manager, program manager.
- Management and administrative services
- Program organization and management guidance
- Developing, defining and monitoring standard reporting requirements
- Preparing capital funding analyses and preparing agendas, memoranda and other technical and management correspondence
- Preparing or reviewing project control analyses
- Reviewing planning and engineering documents (prepared by others), for conformity to defined scope, design and construction packaging, and construction logistics and site planning
- Reviewing planning and design decision impact assessments

- Drafting or reviewing contractual work
- Participating in strategic and tactical planning efforts related to environmental processing

(b) Professional Liability Insurance

If the Design-Builder is not approved by the City's insurance carrier to enroll in the Project Professional Liability policy or if the City does not extend, maintain or if coverage is terminated or non-renewed for the Project Professional Liability as set forth in Section III.5.(a) herein, then Design Builder must maintain Professional Liability Insurance covering acts, errors, or omissions with limits of not less than \$15,000,000 each claim. Coverage must include, but not be limited to, the following: professional services as set forth in the scope of services in the underlying Agreement, and any other services, such as but not limited to technology services, provided by or on behalf of the Design Builder in connection with the performance of the underlying Agreement, pollution liability if environmental site assessments are conducted, and contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of five (5) years.

6) Contractors Pollution Liability

When any work, services, or operations performed involves a potential pollution risk that may arise from the work, services, or operations of Design-Builder and Prime Contractor's scope of services, Contractors Pollution Liability must be provided or caused to be provided, covering bodily injury, property damage and other losses caused by pollution conditions with limits of not less than \$5,000,000. Coverage must include, but not be limited to, the following: completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal and if applicable, include transportation and non-owned disposal coverage. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City is to be named as an additional insured.

7) Railroad Protective Liability

When any work, services, or operations is to be done adjacent to or on railroad or transit property, Design-Builder or Prime Contractor must provide, with respect to the work, services, or operations that Design-Builder performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

8) Installation Floater Insurance

Design-Builder and Prime Contractor must provide and maintain Installation Floater Insurance insuring against damage or destruction of the material and equipment in transit to, or stored on or off the project site which is to be used in the work, services, or operations in connection with this Contract.

9) Builders Risk

When Design-Builder or Prime Contractor undertakes any construction, including improvements, betterments, and/or repairs, Design-Builder or Prime Contractor must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent Project. Coverages must include, but not limited to, the following: right to partial occupancy, material stored off-site and in-transit, equipment breakdown, flood, water including overflow, leakage, sewer backup or seepage, utility services, damage to adjoining and existing property, collapse, debris removal, landscaping, loss resulting from faulty workmanship or materials, testing and mechanical-electrical breakdown, changes in temperature, extra

expense, ordinance or law for increased cost of construction. The City is to be named as an additional insured and loss payee.

B. ADDITIONAL REQUIREMENTS

Evidence of Insurance. Design-Builder and Prime Contractor must furnish the City, O'Hare Modernization Program, 10510 West Zemke Road, 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Contract, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. Design-Builder and Prime Contractor must submit evidence of insurance prior to execution of Contract. The receipt of any certificate does not constitute Contract by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Contract. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Design Builder and Prime Contractor, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Design-Builder and Prime Contractor must advise all insurers of the Contract provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Design-Builder and Prime Contractor for liabilities which may arise from or relate to the Contract. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

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

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

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

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

Contractors Insurance Primary. All insurance required of Design-Builder and Prime Contractor under this Contract must be endorsed to state that Design-Builder and Prime Contractor's insurance policy is primary and not contributory with any insurance carrier by the City.

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

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

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

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

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

Other Insurance obtained by Contractor. If Design-Builder or Prime Contractor desires additional coverage, Design-Builder or Prime Contractor will be responsible for the acquisition and cost.

Insurance required of Design Professionals and Subcontractors. Design-Builder must name Design Professionals and/or Subcontractors as a named insured(s) under Design Builder's insurance or Design-Builder will require each Design Professional and each Subcontractor to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance (including naming the City as an alternate employer when applicable) and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section III, A. Insurance Required. The limits of coverage will be determined by Design-Builder but be no less than \$5,000,000 per occurrence for access to airside and \$2,000,000 per occurrence for access to landside for Commercial General Liability and Auto Liability. Design-Builder will require each Design Professional to provide and maintain Professional Liability Insurance with limits of not less than \$5,000,000 for design, architectural, or engineering services and limits of coverage for all other professional services will be determined by Design-Builder. Design-Builder must determine if Design Professional or Subcontractor must also provide any additional coverage or other coverage outlined in Section III. A. Insurance Required. Design-Builder is responsible for ensuring that each Design Professional and each Subcontractor has named the City as an additional insured where required and each Subcontractor must name the City as an additional insured under the Commercial General Liability on ISO form CG 2010 10 01 and CG 2037 10 01 for ongoing operation and completed operations or an endorsement form at least as broad and acceptable to the City. Design-Builder is responsible for ensuring that each Design Professional and each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Design-Builder must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Design Professionals or Subcontractors to comply with required coverage and terms and conditions outlined herein will not limit Design-Builder's liability or responsibility.

If Prime Contractor has been retained by Design-Builder to perform the Work required in this Contract, Prime Contractor will be responsible for insuring all Prime Contractor's subcontractors adhere to the requirements required herein.

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

III. INSURANCE TO BE PROVIDED BY DESIGN-BUILDER FOR COVERAGE NOT INCLUDED IN THE OCIP AND INSURANCE TO BE PROVIDED BY DESIGN-BUILDER NOT INSURED BY THE OCIP

The OCIP does not include activities not solely related to the work, services, or operations including but not limited to, home and branch office activities off-site, factory, warehouse or manufacturing facilities or similar place, the interest of vendors, and others who merely supply or transport personnel, materials, parts or equipment or any other items to or from the Project Site.

A. INSURANCE REQUIRED

Design-Builder and Prime Contractor must provide and maintain at Design-Builder and Prime Contractor's own expense, until Contract completion and during the time period following final completion if Design-Builder and Prime Contractor is required to return and perform any additional work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Contract

Prime Contractor for purposes of the insurance requirements shall mean the person or entity that has been retained directly by the Design-Builder to perform the Work required in this Contract.

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

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work, services, or operations under this Contract and Employers Liability coverage with limits of not less than \$2,000,000 each accident; \$2,000,000 disease-policy limit; and \$2,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage must include, but not be limited to, the following: alternate employer and, when applicable, other state endorsement and voluntary compensation. The City must be scheduled as an alternate employer.

Coverage must apply both on and away from the Project Site.

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

2) Commercial General Liability (Primary or Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include, but not be limited to, the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, runway work, defense, contractual liability (not to include endorsement CG 21 39 or equivalent), no exclusion for damage to work performed by Subcontractors, any limitation of coverage for designated premises or project is not permitted (not to include endorsement CG 21 44 or equivalent), and any endorsement modifying or deleting the exception to the Employer's Liability exclusion is not permitted. If a general aggregate limit applies, the general aggregate must apply per project/location and once per policy period; or Design-Builder and Prime Contractor may obtain separate insurance to provide the required limits which will not be subject to depletion because of claims arising out of any other work or activity of

Design-Builder and Prime Contractor. If a general aggregate applies to products/completed operations, the general aggregate limits must apply per project and once per policy period.

The City must be provided additional insured status with respect to liability arising out of Design-Builder and Prime Contractor's work, services or operations and completed operations performed on behalf of the City. Such additional insured coverage must be provided on ISO form CG 2010 10 01 and CG 2037 10 01 or endorsement form at least as broad for ongoing operations and completed operations. The City's additional insured status must apply to liability and defense of suits arising out of Design-Builder and Prime Contractor's acts or omissions, whether such liability is attributable to the Design-Builder and Prime Contractors or to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Design-Builder and Prime Contractor's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

In addition, DMJM Aviation Partners JV, WSP/Parsons Brinkerhoff, and the Architect/Engineer are to be provided additional insured status.

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

3) Automobile Liability (Primary and Umbrella)

Design-Builder and Prime Contractor must maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. Coverages must include, but not be limited to, the following: ownership, maintenance, or use of any auto whether owned, leased, non-owned or hired used in the performance of the work or devices, both on and off the Project site including loading and unloading. If applicable, coverage extension must include an MCS-90 endorsement where required by the Motor Carrier Act of 1980. The City and other entities required by City are to be named as additional insureds on a primary, non-contributory basis.

Coverage must apply both on and away from the Project Site.

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

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$3,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. If a general aggregate limit applies, the general aggregate must apply per project/location. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Design-Builder and Prime Contractor may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Professional Liability

(a) Project Professional Liability

The City has purchased a Project Professional Policy covering acts, errors or omissions of the Design Builder, its Design Professionals, and other architects, engineers, construction managers, program managers, project managers, and other professionals, at the City's discretion, related to the Services performed on the Project.

The policy has a limit of liability of \$50,000,000 each claim and policy term aggregate with a deductible of \$350,000 each claim. The policy expires December 31, 2022 and provides five (5) years of extended reporting period. The City of Chicago may, at its option extend the policy past its expiration, terminate the policy prior to expiration or not renew the policy at expiration. If coverage is not extended or if the policy is terminated or not renewed, the Design Builder and each Design Professional must provide evidence of Professional insurance as required in Section III.5.(b) herein covering all Services in connection with this Agreement.

The City of Chicago will provide a certificate of insurance to Design Builder and its Design Professionals insured under the policy. Upon extension of the policy, revised certificates of insurance will be issued.

The City of Chicago, as trustee, has established a deductible fund, to satisfy all deductible obligations of the Design Builder and its Design Professionals and other architects, engineers, construction managers, program managers, project managers, and other professionals covered under the Project Professional Liability policy. The City will withhold three quarters (3/4%) of one percent of each pay out to each firm or entity insured under the policy to fund the deductible obligations. Once all deductible obligations have been satisfied under the policy, the City will refund the remaining proceeds proportionately to each firm or entity in relationship to the amount which each firm or entity contributed.

(b) Professional Liability Insurance

If the Design-Builder is not approved by the City's insurance carrier to enroll in the Project Professional Liability policy or if the City does not extend, maintain or if coverage is terminated or non-renewed for the Project Professional Liability as set forth in Section III.5.(a) herein, then Design Builder must maintain Professional Liability Insurance covering acts, errors, or omissions with limits of not less than \$15,000,000 each claim. Coverage must include, but not be limited to, the following: professional services as set forth in the scope of services in the underlying Agreement, and any other services, such as but not limited to technology services, provided by or on behalf of the Design Builder in connection with the performance of the underlying Agreement, pollution liability if environmental site assessments are conducted, and contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of five (5) years.

6) Contractors Pollution Liability

When any work, services, or operations performed involves a potential pollution risk that may arise from the work, services, or operations of Design-Builder and Prime Contractor's scope of services, Contractors Pollution Liability must be provided or caused to be provided, covering bodily injury, property damage and other losses caused by pollution conditions with limits of not less than \$5,000,000. Coverage must include, but not be limited to, the following: completed operations,

contractual liability, defense, excavation, environmental cleanup, remediation and disposal and if applicable, include transportation and non-owned disposal coverage. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City is to be named as an additional insured.

7) Railroad Protective Liability

When any work, services, or operations is to be done adjacent to or on railroad or transit property, Design-Builder or Prime Contractor must provide, with respect to the work, services, or operations that Design-Builder performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

8) Installation Floater Insurance

Design-Builder and Prime Contractor must provide and maintain Installation Floater Insurance insuring against damage or destruction of the material and equipment in transit to, or stored on or off the project site which is to be used in the work, services, or operations in connection with this Contract.

B. ADDITIONAL REQUIREMENTS

Evidence of Insurance. Design-Builder and Prime Contractor must furnish the City, O'Hare Modernization Program, 10510 West Zemke Road, 60666, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Contract, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. Design-Builder and Prime Contractor must submit evidence of insurance prior to execution of Contract. The receipt of any certificate does not constitute Contract by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Contract. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Design Builder and Prime Contractor, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Design-Builder and Prime Contractor must advise all insurers of the Contract provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Design-Builder and Prime Contractor for liabilities which may arise from or relate to the Contract. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

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

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

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

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

Contractors Insurance Primary. All insurance required of Design-Builder and Prime Contractor under this Contract must be endorsed to state that Design-Builder and Prime Contractor's insurance policy is primary and not contributory with any insurance carrier by the City.

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

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

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

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

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

Other Insurance obtained by Contractor. If Design-Builder or Prime Contractor desires additional coverage, Design-Builder or Prime Contractor will be responsible for the acquisition and cost.

Insurance required of Design Professionals and Subcontractors. Design-Builder must name Design Professionals and/or Subcontractors as a named insured(s) under Design Builder's insurance or Design-Builder will require each Design Professional and each Subcontractor to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance (including naming the City as an alternate employer when applicable) and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section III, A. Insurance Required. The limits of coverage will be determined by Design-Builder but be no less than \$5,000,000 per occurrence for access to airside and \$2,000,000 per occurrence for access to landside for Commercial General Liability and Auto Liability. Design-Builder will require each Design

Professional to provide and maintain Professional Liability Insurance with limits of not less than \$5,000,000 for design, architectural, or engineering services and limits of coverage for all other professional services will be determined by Design-Builder. Design-Builder must determine if Design Professional or Subcontractor must also provide any additional coverage or other coverage outlined in Section III. A. Insurance Required. Design-Builder is responsible for ensuring that each Design Professional and each Subcontractor has named the City as an additional insured where required and each Subcontractor must name the City as an additional insured under the Commercial General Liability on ISO form CG 2010 10 01 and CG 2037 10 01 for ongoing operation and completed operations or an endorsement form at least as broad and acceptable to the City. Design-Builder is responsible for ensuring that each Design Professional and each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Design-Builder must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Design Professionals or Subcontractors to comply with required coverage and terms and conditions outlined herein will not limit Design-Builder's liability or responsibility.

If Prime Contractor has been retained by Design-Builder to perform the Work required in this Contract, Prime Contractor will be responsible for insuring all Prime Contractor's subcontractors adhere to the requirements required herein.

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

EXHIBIT F
SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT
AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION CONTRACTS

I. Policy and Terms

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority Owned Business Enterprises (MBEs) and Women Owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, as well as MBEs and WBEs certified by Cook County, Illinois, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

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

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation. The City has set goals of 26% and 6% on all contracts in line with its overall aspirational goals, unless otherwise specified herein, and is requiring that bidders make a good faith effort in meeting or exceeding these goals.

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

As provided in Section 2-92-720(e), Diversity Credit Program credits awarded by the City's affirmative action advisory board may also be applied to the contract specific goals.

Contract Specific Goals and Bids

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

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE and WBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

MBE Contract Specific Goal: [SEE BOOK 2]

WBE Contract Specific Goal: [SEE BOOK 2]

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE and WBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

Contract Specific Goals and Contract Modifications

1. The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs and WBEs to meet the Contract Specific Goals.
 - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE or WBE participation and at what rates.
 - b. Contractor must produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

II. Definitions

"Area of Specialty" means the description of a MBE's or WBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE

and WBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

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

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

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

"Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

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

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

“Directory” means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

“Good Faith Efforts” means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program’s requirements.

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

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

“Minority Business Enterprise” or “MBE” means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a minority owned and controlled business by Cook County, Illinois.

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

“Women Business Enterprise” or “WBE” means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a women owned business by Cook County, Illinois.

III. **Joint Ventures**

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

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

1. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

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

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

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

C. Schedule B: MBE/WBE Affidavit of Joint Venture

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

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

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

IV. **Counting MBE and WBE Participation Towards the Contract Specific Goals**

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

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, a firm that is certified as both a MBE and a WBE could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE or WBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.
 - 1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
 - 2. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

Only payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.

- C. If the MBE or WBE performs the work itself:
 - 1. 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE or WBE is a manufacturer:
 - 1. 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE or WBE is a distributor or supplier:
 - 1. 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.

- F. If the MBE or WBE is a broker:
 - 1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.
 - 2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE or WBE is a member of the joint venture contractor/bidder:
 - 1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals.
 - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.
 - 2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs, however, work subcontracted out to non-certified firms may not be counted.
- H. If the MBE or WBE subcontracts out any of its work:
 - 1. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
 - 2. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
 - 3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

V. **Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

- A. Schedule B: MBE/WBE Affidavit of Joint Venture

1. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule D, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE

ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

D. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago or Cook County, Illinois, must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

F. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts.
2. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
 - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
 - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
 - i. Names, addresses, emails and telephone numbers of firms solicited;
 - ii. Date and time of contact;
 - iii. Person contacted;
 - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).

- c. Evidence of contact, including:
 - i. Project identification and location;
 - ii. Classification/commodity of work items for which quotations were sought;
 - iii. Date, item, and location for acceptance of subcontractor bids;
 - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
 - v. Bids received from all subcontractors.
 - d. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- G. Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
 - H. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
 - I. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
 - J. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.
 - K. Any applications for City approval of a Mentor Protégé agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

VI. **Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
 - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids

are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.

2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.
9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business

assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.

- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

VII. **Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- B. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:
 - 1. Unavailability after receipt of reasonable notice to proceed;
 - 2. Failure of performance;
 - 3. Financial incapacity;
 - 4. Refusal by the subcontractor to honor the bid or proposal price or scope;
 - 5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
 - 6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
 - 7. The subcontractor's withdrawal of its bid or proposal; or
 - 8. De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification.
 - 9. Termination of a Mentor Protégé Agreement.
- C. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:
 - 1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.

2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
 3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
 4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
 5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

VIII. **Reporting and Record Keeping**

- A. During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.

Once the prime contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an email and/or fax notification

requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

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

- C. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- D. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

IX. **Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

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

X. **Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE or WBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE or WBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

XI. **Equal Employment Opportunity**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

51st Street Business Association * 220 E. 51 st Street Chicago, IL 60615 Phone: 773-285-3401 Fax: 773-285-3407 Email: the51ststreetbusinessassociation@yahoo.com Web: www.51stStreetChicago.com Maintains list of certified firms: Yes Provides training for businesses: Yes	African American Contractors Association - AACA P.O. Box #19670 Chicago, IL 60619 Phone: 312-915-5960 Email: aacanatlassoc@gmail.com Web: www.aacanatl.org Maintains list of certified firms: Yes Provides training for businesses: Yes
Angel of God Resource Center, Inc. 14527 S. Halsted Chicago, IL 60827 Phone: 708-392-9323 Fax: 708-880-0121 Email: asmith5283@yahoo.com ; aogrc@angelofgodresourcecenter.org Web: www.angelofgodresourcecenter.org Maintains list of certified firms: No Provides training for businesses: Yes	Association of Asian Construction Enterprises * 5677 W. Howard Niles, IL 60714 Phone: 847-673-7377 Fax: 847-673-2358 Email: nakmancorp@aol.com Maintains list of certified firms: Yes Provides training for businesses: Yes
Austin African American Business Networking Assoc. 5820 W. Chicago Ave., Chicago, IL 60651 Phone: 773-626-4497 Email: aaabna@yahoo.com Web: www.aaabna.org Maintains list of certified firms: No Provides training for businesses: Yes	Black Contractors United * 12000 S. Marshfield Ave. Calumet Park, IL 60827 Phone: 708-389-5730 Fax: 708-389-5735 Email: bcunewera@att.net Web: www.blackcontractorsunited.com Maintains list of certified firms: Yes Provides training for businesses: Yes
Business Leadership Council * 230 W. Monroe Street, Ste 2650 Chicago, IL 60606 Phone: 312-628-7844 Fax: 312-628-7843 Email: Karen.r@businessleadershipcouncil.org Web: www.businessleadershipcouncil.org Maintains list of certified firms: Yes Provides training for businesses: Yes	LGBT Chamber of Commerce of Illinois * 3179 N. Clark St., 2nd Floor Chicago, IL 60657 Phone: 773-303-0167 Fax: 773-303-0168 Email: jholston@lgbtcc.com Web: www.lgbtcc.com Maintains list of certified firms: Yes Provides training for businesses: Yes

Chatham Business Association Small Business Dev.* 800 E. 78 th Street Chicago, IL 60619 Phone: 773-994-5006 Fax: 773-855-8905 Email: melindakelly@cbaworks.org Web: www.cbaworks.org Maintains list of certified firms: Yes Provides training for businesses: Yes	Chicago Minority Supplier Development Council Inc. * 105 W. Adams, Suite 2300 Chicago, IL 60603-6233 Phone: 312-755-2550 Fax: 312-755-8890 Email: pbarreda@chicagomsgdc.org Web: www.chicagomsgdc.org Maintains list of certified firms: Yes Provides training for businesses: Yes
Chicago Urban League * 4510 S. Michigan Ave. Chicago, IL 60653 Phone: 773-624-8810 Fax: 773-451-3579 Email: sbrinston@thechicagourbanleague.org Web: www.cul-chicago.org Maintains list of certified firms: Yes Provides training for businesses: Yes	Chicago Women in Trades (CWIT) 2444 W. 16 th Street Chicago, IL 60608 Phone: 312-942-1444 Jayne Vellinga, Executive Director Email: jvellinga@cwit2.org Web: www.chicagowomenintrades2.org Maintains list of certified firms: No Provides training for businesses: Yes
Contractor Advisors Business Development Corp. * 1507 E. 53 rd Street, Suite 906 Chicago, IL. 60615 Phone: 312-436-0301 Email: info@contractoradvisors.us Web: www.contractoradvisors.us Maintains list of certified firms: Yes Provides training for businesses: Yes	Cosmopolitan Chamber of Commerce 1633 S. Michigan Avenue Chicago, IL. 60616 Phone: 312-971-9594 Fax: 312-341-9084 Email: rmcgowan@cosmochamber.org Web: www.cosmochamber.org Maintains list of certified firms: Yes Provides training for businesses: Yes
Do For Self Community Development Co. * 7447 S South Shore Drive, Unit 22B Chicago, IL 60649 Phone: 773-356-7661 Email: dennisdoforself@hotmail.com Web: www.doforself.org Maintains list of certified firms: No Provides training for businesses: Yes	Far South Community Development Corporation 9923 S. Halsted Street, Suite D Chicago, IL 60628 Phone: 773-941-4833 Fax: 773-941-5252 Email: lacy@farsouth.org Web: www.farsouthcdc.org Maintains list of certified firms: No Provides training for businesses: Yes

Federation of Women Contractors * 216 W. Jackson Blvd. #625 Chicago, IL 60606 Phone: 312-360-1122 Fax: 312-750-1203 Email: fwcchicago@aol.com Web: www.fwcchicago.com Maintains list of certified firms: Yes Provides training for businesses: Yes	Fresh Start Home Community Development Corp. 5168 S. Michigan Avenue, 4N Chicago, IL 60615 Phone: 312-632-0811 Fax: 855-270-4175 Email: Info@FreshStartNow.us Web: www.FreshStartNow.us Maintains list of certified firms: Yes Provides training for businesses: Yes
Greater Englewood Community Development Corp. * 815 W. 63rd Street Chicago, IL 60621 Phone: 773-651-2400 Fax: 773-651-2400 Email: jharbin@greaterenglewoodcdc.org Web: www.greaterenglewoodcdc.org Maintains list of certified firms: Yes Provides training for businesses: Yes	Greater Pilsen Economic Development Assoc. * 1801 S. Ashland Chicago, IL 60608 Phone: 312-698-8898 Email: greaterpilsen@gmail.com Web: www.greaterpilsen.org Maintains list of certified firms: Yes Provides training for businesses: Yes
Greater Far South Halsted Chamber of Commerce * 10615 S. Halsted Street Chicago, IL 60628 Phone: 518-556-1641 Fax: 773-941-4019 Email: halstedchamberevents@gmail.com Web: www.greaterfarsouthhalstedchamber.org Maintains list of certified firms: Yes Provides training for businesses: Yes	Greater Southwest Development Corporation 2601 W. 63 rd Street Chicago, IL 60629 Phone: 773-362-3373 Fax: 773-471-8206 Email: c.james@greatersouthwest.org Web: www.greatersouthwest.org Maintains list of certified firms: No Provides training for businesses: Yes
Hispanic American Construction Industry Association (HACIA) * 650 W. Lake St., Unit 415 Chicago, IL 60661 Phone: 312-575-0389 Fax: 312-575-0544 Email: jperez@haciaworks.org Web: www.haciaworks.org Maintains list of certified firms: Yes Provides training for businesses: Yes	Illinois Hispanic Chamber of Commerce * 222 Merchandise Mart Plaza, Suite 1212 c/o 1871 Chicago, IL 60654 Phone: 312-425-9500 Email: aalcantar@ihccbbusiness.net Web: www.ihccbbusiness.net Maintains list of certified firms: Yes Provides training for businesses: Yes

<p>Illinois State Black Chamber of Commerce *</p> <p>411 Hamilton Blvd., Suite 1404 Peoria, Illinois 61602 Phone: 309-740-4430 / 773-294-8038 Fax: 309-672-1379 Email: LarryIvory@IllinoisBlackChamber.org; vgilb66709@yahoo.com www.illinoisblackchamberofcommerce.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>JLM Business Development Center*</p> <p>2622 W. Jackson Boulevard Chicago, IL 60612 Phone: 773-826-3295 Fax: 773-359-4021 Email: jlbizcenter@gmail.com Web: www.jlmcenter.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Latin American Chamber of Commerce *</p> <p>3512 W. Fullerton Avenue Chicago, IL 60647 Phone: 773-252-5211 Fax: 773-252-7065 Email: d.lorenzopadron@LACCUSA.com Web: www.LACCUSA.com Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>National Association of Women Business Owners *</p> <p>500 Davis Street, Ste 812 Evanston, IL 60201 Phone: 773-410-2484 Fax: 847-328-2018 Email: wjaehn@nawbochicago.org Web: www.nawbochicago.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>National Black Wall Street *</p> <p>4655 S. King Drive, Suite 203 Chicago, IL 60653 Phone: 773-268-6900 Fax: 773-392-0165 Email: markallen2800@aol.com Web: www.nationalblackwallstreetchicago.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>National Organization of Minority Engineers (NOME)*</p> <p>33 W. Monroe, Suite 1540 Chicago, IL 60603 Phone: 312-960-1239 Email: grandevents1@sbcglobal.net Web: www.nomeonline.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Neighborhood Development Services, NFP *</p> <p>10416 South Maryland Avenue Chicago, IL 60628 Phone: 773-413-9348 Fax: 773-371-0032 Email: neighborhooddevservices@gmail.com Web: www.ndsnfp.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Rainbow/PUSH Coalition *</p> <p>930 E. 50th Street Chicago, IL 60615 Phone: 773-256-2768 Fax: 773-373-4103 Email: jmitchell@rainbowpush.org Web: www.rainbowpush.org Maintains list of certified firms: Yes Provides training for businesses: No</p>

Real Men Charities, Inc. 2423 E. 75 th Street Chicago, IL 60649 Phone: 773-425-4113 Email: ymoyo@realmencook.com Web: www.realmencook.com Maintains list of certified firms: No Provides training for businesses: Yes	RTW Veteran Center 7415 E. End, Suite 120 Chicago, IL 60649 Phone: 773-406-1069 Fax: 866-873-2494 Email: rtwvetcenter@yahoo.com Web: www.rtwvetcenter.org Maintains list of certified firms: Yes Provides training for businesses: Yes
South Shore Chamber, Inc. * 1750 E. 71 st Street Chicago, IL 60649-2000 Phone: 773-955- 9508 Tonya Trice, Executive Director Email: ttrice@southshorechamberinc.org Web: www.southshorechamberinc.org Maintains list of certified firms: Yes Provides training for businesses: Yes	St. Paul Church of God in Christ Community Development Ministries, Inc. (SPCDM) 4550 S. Wabash Avenue Chicago, IL. 60653 Phone: 773-538-5120 Fax: 773-538-5125 Email: spcdm@sbcglobal.net Web: www.stpaulcdm.org Maintains list of certified firms: No Provides training for businesses: Yes
The Monroe Foundation 1547 South Wolf Road Hillside, Illinois 60162 Phone: 773-315-9720 Email: omonroe@themonroefoundation.org Web: www.themonroefoundation.org Maintains list of certified firms: No Provides training for businesses: Yes	US Minority Contractors Association, Inc. * 1250 Grove Ave. Suite 200 Barrington, IL 60010 Phone: 847-708-1597 Fax: 847-382-1787 Email: admin@usminoritycontractors.org Web: www.USMinorityContractors.org Maintains list of certified firms: Yes Provides training for businesses: Yes
Women's Business Development Center * 8 S. Michigan Ave., 4th Floor Chicago, IL 60603 Phone: 312-853-3477 Fax: 312-853-0145 Email: fcurry@wbdc.org Web: www.wbdc.org Maintains list of certified firms: Yes Provides training for businesses: Yes	Urban Broadcast Media, Inc. 4108 S. King Drive, Chicago, IL 60653 Phone: 312-614-1075 Email: drleonfinney312@gmail.com Web: www.urbanbroadcastmedia.org Maintains list of certified firms: No Provides training for businesses: Yes

Women Construction Owners & Executives (WCOE) * Chicago Caucus 308 Circle Avenue Forest Park, IL 60130 Phone: 708-366-1250 Email: mkm@mkmservices.com Web: www.wcoeusa.org Maintains list of certified firms: Yes Provides training for businesses: No	Your Community Consultants Foundation 9301 S. Parnell Ave., Chicago, IL 60620 Phone: 773-224-9299 Fax: 773-371-0032 Email: allen81354@aol.com Maintains list of certified firms: No Provides training for businesses: Yes
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EXHIBIT G
KEY PERSONNEL

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT H
FORM OF DESIGN BUILDER'S GUARANTEE

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT I
MONTHLY REPORT FORM

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT J
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT(S)
[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT K
MBE/WBE COMPLIANCE PLAN

[TO BE INCLUDED WITH FINAL EXECUTED AGREEMENT]

EXHIBIT L
SEXUAL HARASSMENT POLICY AFFIDAVIT (SECTION 2-92-612)

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

Contract title: _____
Specification #: _____

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

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

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

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

Name of Contractor: _____
(Print or Type)

Signature of Authorized Officer: _____
(Signature)

Title of Signatory: _____
(Print or Type)

State of _____
County of _____

Signed and sworn (or affirmed) to before me on _____ (date) by
_____ (name/s of person/s making statement).

(Signature of Notary Public)

(Seal)