

**CITY OF CHICAGO DEPARTMENT OF AVIATION**  
**Taxiway A&B Bridge Heating System Upgrades**

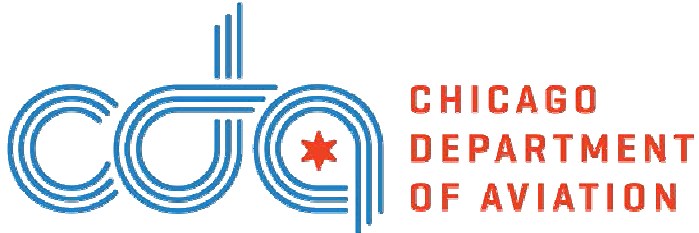
**PART TWO OF THREE**  
**GENERAL CONDITIONS**

**SPECIFICATION NO.: 946800**

**PROJECT NO.: H6214.18-00**



**CITY OF CHICAGO**  
**Rahm Emanuel**  
**Mayor**



**DEPARTMENT OF AVIATION**  
**Jamie L. Rhee**  
**Commissioner**

**Issued by:**

**DEPARTMENT OF PROCUREMENT SERVICES**  
**Shannon E. Andrews**  
**Chief Procurement Officer**

**March 13, 2019**  
**ISSUED FOR BID**

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**CITY OF CHICAGO  
CHICAGO DEPARTMENT OF AVIATION  
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

**I. GENERAL PROVISIONS**

**A. Definitions.**

"Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries or third parties, controls or is controlled by, or is under common control with, the person or entity. A person or entity shall 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 shared ownership, a trust, a contract or otherwise. Indicia of control may include, without limitation: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or reorganization of a business entity following a determination of City contracting ineligibility using substantially the same management, employees, ownership or principals. In determining whether persons or entities are Affiliates, the City shall consider all appropriate factors, including but not limited to common ownership, common management and contractual relationships.

"Airport" means Chicago O'Hare International Airport or Chicago Midway International Airport together with any additions thereto, improvements, or enlargements thereof, now or hereafter made, except any land rights-of-way or improvements which are now or may hereafter be owned by or are part of the transportation system operated by the Chicago Transit Authority, or any successor thereto, wherever located within the boundaries of the Airport.

"Airport Operations" means 1) the movement of passengers, vehicles and freight into, on and out of the airport, and 2) aircraft operations into, on and out of the airport and all support services needed to operate aircraft including but not limited to, fueling, repairing, baggage services and food services.

"Airside" or "Airfield" means, generally, those areas of an Airport beyond the terminals, buildings, and gates where aircraft operate. Airside includes Aircraft Operations Area (AOA), such as runways, taxiways and other areas of the Airport that are used for taxiing, hovering, take-off and landing of Aircraft, including entry and exit from Aircraft loading ramps and parking areas and areas not necessarily under the control of the Air Traffic Control Tower.

"Award" means the date that the contract is released by the Department of Procurement Services.

"Baseline Schedule" means a schedule prepared to illustrate a planned method of performing a group of inter-related tasks. The baseline schedule is the Contractor's plan to perform the work identified by the Contract Documents with the time established by the Contract Documents, formatted in the Critical Path Method and approved by the Commissioner in accordance with Article VIII.

"Beneficial Occupancy" means the date or decision for use of the project or portion thereof for the purpose intended whereby the Owner/Tenant may occupy or use the building or area even while contract work is on-going.

"Business Days" means business days according to the City of Chicago Calendar.

"CDA" means the Chicago Department of Aviation.

"Calendar Day" means every day shown on the calendar including Saturdays, Sundays and holidays.

"CIP" means the Capital Improvement Program of the Chicago Airport System for the City of Chicago.

"Chicago O'Hare International Airport Design and Construction Standards" means, collectively, those documents which have been or may be issued from time to time by the City containing design and construction standards for new construction at the Airport.

"Chief Procurement Officer" means the Chief Executive of the Department of Procurement Services for the City of Chicago, and any representative duly authorized in writing to act on the Chief Procurement Officer's behalf.

"City" means the City of Chicago, a municipal corporation and home-rule government under sections 1 and 6(a), Article VII, respectively, of the 1970 Constitution of the State of Illinois.

"Commissioner of Aviation", or "Commissioner", means the Chief Executive of the Chicago Department of Aviation for the City of Chicago and any representative duly authorized in writing to act on the Commissioner's behalf.

"Comptroller" means the Chief Executive of the Department of Finance for the City of Chicago and any representative duly authorized in writing to act on the Comptroller's behalf.

"Construction Manager" means the entity(ies) that the City has retained to provide construction management services for projects at the City's Airports.

"Contract" or "Agreement" means this Contract for Construction, including all exhibits attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made from time to time in accordance with the terms hereof.

"Contract Documents" means all of the documents comprising this Contract, including: Part One, The Requirements for Bidders and Proposal Documents; Part Two, The General Conditions; Part Three, the Technical Specifications, and the Contract Drawings.

"Contract Completion Date" is the date, determined by the number of Calendar Days (set forth in Part One of the Contract Documents) following issuance of a Notice-to-Proceed by which the Contractor must achieve Substantial Completion of the Project. Part One may also set forth Calendar Days for Substantial Completion of phases or milestones. The Contract Completion Date and/or completion dates for phases and milestones, if any may be adjusted by Contract Modification.

"Contract Modification" is a document signed by the Contractor and City, (or the City alone under certain circumstances stated in the Contract Documents) that adjusts the scope of Work, the Contractor's compensation, the Contract Completion Date, or the time allowed by the Contract for completion of any phase or milestone.

"Contract Price" is the total compensation to be paid to the Contractor for the Work by the City as may be amended from time to time by Contract Modifications.

"Contractor's Warranty" means the Contractor's representation as to the character and quality of the Work in accordance with the terms and conditions of the Contract Documents, and the Contractor's promise to repair and replace the Work not in conformance with such representations. Without limiting the scope or duration of any Manufacturer's Warranty provided for specific parts of the Work, all Work furnished under this Contract is guaranteed by Contractor against defective materials and workmanship, improper installation or performance, and non-compliance with the Contract documents as prescribed by law.

"Contractor" refers to the person or entity that is awarded the Contract.

"Days" (whether or not capitalized) means calendar days, unless otherwise stated.

"Daytime Work" means work performed between the hours of 6:00 AM and 6:00 PM, unless otherwise defined in the plans.

"Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, executive orders, and any other applicable directives pertaining to environmental or health matters.

"FAA" means the Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

"Field Order" means a written order to the Contractor signed by the Construction Manager (with the prior written approval of the Commissioner and the Chief Procurement Officer) unilaterally directing changes in the Work and/or in the Contract time.

"Final Completion of the Project" means the last date on which all of the following events have occurred: the Commissioner has determined that all Punch List Work and any other remaining Work has been completed in accordance with the Contract Documents; final inspections have been completed and operations systems and equipment testing have been completed; final occupancy certifications have been issued; all Project Record Documents have been provided to the Commissioner.

"Hazardous Materials" means friable asbestos or asbestos containing materials, polychlorinated biphenyls (PCBs), petroleum products, natural gas, source material, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2011, et seq.), pesticides regulated under the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. Sec 136, et seq.), and any hazardous waste, toxic or dangerous substance or related material, including any substance defined, determined or identified as "hazardous waste", or "toxic substance" or "contaminant" (or comparable term) in any Environmental Law.

"Key Personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Contract.

"Landside" means the airport terminal areas, parking, roadway, baggage and curbside areas and other areas outside the Aircraft Operations Areas.

"Manufacturer's Warranty" means a representation by a fabricator or manufacturer as to the character and quality of materials that are a part of the Work, along with a promise to repair or replace materials not in conformance with such representation, which Warranty is provided by a fabricator or manufacturer in the normal course of its business.

"MCC" means the Municipal Code of Chicago.

"Monthly Update Schedule" means a version of an original Baseline Schedule that contains a record of progress to date and additions representing accepted changes in the future sequence of the work. The Monthly Update Schedule will accurately forecast the contractor's plan to complete the remaining Work within the time established by the Contract Documents as adjusted by Contract Modifications or Field Order.

"Moratorium Day" means a workday on which restrictions imposed on the performance of the work (other than due to weather, see Weather Day) by the Commissioner or other applicable authorities (most typically during holiday travel seasons) which so interfere with the prosecution of the Work as to be deemed by the Commissioner an event beyond the reasonable control of the Contractor.

"Night Work" means work performed between the hours of 6:00 pm and 6:00 am unless otherwise defined in the plans.

"Notice-To-Proceed" means written authorization from the Commissioner to the Contractor to commence the Work required by the Contract Documents.



"Office of Compliance" or "OCX" refers to the City department which oversees the MBE/WBE program in conjunction with the Department of Procurement Services.

"O'Hare Coordinate System" means the grid coordinate system originally established for the Airport.

"OMP" means the O'Hare Modernization Program of the City of Chicago.

"O'Hare Monument System" means the 'new' Monument System which was established in 2002. The coordinates are based upon North American Datum (NAD) 1983 and the elevation is based upon North American Vertical Datum (NAVD) 1988.

"Owner" means the City of Chicago.

"Pay Estimate" means a payment request to the City prepared by the Construction Manager for Work performed by Contractor. Pay estimates will be based upon actual quantities of Work performed at the unit prices specified in the Contractor's bid or, if a lump sum line item or lump sum contract, at the prices specified in the Work breakdown.

"Premium Time Cost" means additional labor costs resulting from working outside of regular scheduled working hours. Premium time costs include overtime and shift differentials as determined by the applicable labor union contract.

"PMO" means the Program Management Office that the City has retained to provide overall management services for the OMP.

"Project" means, collectively, the improvements to be constructed by the Contractor in accordance with the Contract.

"Project Limit Lines" means the geographical boundaries of the Project, as more fully identified and described in the Contract Drawings.

"Project Record Documents" are all documents the Contract requires the Contractor to provide to the City including but not limited to shop drawings, As-Built Documents, parts manuals, operation and maintenance manuals, project manuals and or specifications and manufacturers warranties.

"Punch List Work" means minor adjustments, repairs or deficiencies in the Work. Whether an item is Punch List Work or necessary for Substantial Completion will be determined in the sole discretion of the Commissioner.

"Risk Management Office" means the Benefits and Risk Management Office in the Department of Finance for the City, which is under the direction of the Comptroller and which is charged with the review and analysis of insurance and related liability matters for the City.

"Special Wastes" means those substances as defined in 415 ILCS 5/1 et seq. of the Illinois Environmental Protection Act and as further defined in Section 809.13 of 35 Illinois Administrative Code, Subtitle G, Ch. 1.

"Subcontractor" means any person or entity with whom Contractor subcontracts to provide any part of the Work and all subcontractors of any tier, suppliers, and materialmen, whether or not in privity with Contractor.

"Substantial Completion of a Milestone, Phase, or the Project" is the date upon which, in the determination of the Commissioner, the Contractor has completed all such work in accordance with the Contract Documents (including the commissioning of all systems and turnover of all operations and maintenance manuals) except for Punch List Work, and the City is able to occupy and/or use the Work as applicable that makes up the Phase, a Milestone, or the Project, as a whole for the purpose intended.

"Time Extension" means the period of time, in Calendar Days, that will be provided to the Contractor for a delay to the critical path of the approved Baseline Schedule that affected the Substantial Completion of any Phase, Milestone, or the Project, provided that the delay was caused by a City-directed change in the work or an event for which the Contractor is entitled to additional time to perform the Work under the terms of the General Conditions.

"TSA" means the federal Transportation Security Administration created by the Aviation and Transportation Security Act of 2001, and any successor agency thereto.

"Weather Day" means a workday on which restrictions imposed on the performance of the work by weather that so interferes with the prosecution of the work as to be deemed by the Commissioner an event beyond the reasonable control of the Contractor.

"Work" means all labor, materials, equipment, and other incidentals furnished by the Contractor necessary or convenient to the successful completion of the Project, and which are required by, incidental or collateral to the Contract Documents. Work which is necessary, convenient, required, incidental or collateral to that shown on the Contract documents shall be deemed to be included in the Contract Price and shall be furnished and installed by the Contractor at no additional cost to the City.

"Work Day" means every Calendar Day that the approved Baseline and Monthly Update Schedules indicate that the Contractor is to perform work.

B. Contract Interpretation.

Any headings of this Contract are for convenience of reference only and do not define or limit the provisions thereof. In this Contract, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder Contract" and any similar terms used in this Contract refer to this Contract. All section references, unless otherwise expressly indicated, are to sections of this Contract. Words importing persons will include firms, associations, partnerships, trusts, corporations, joint ventures and other legal entities, including public bodies, as well as natural persons. Words of any gender will be deemed and construed to include correlative words of other genders. Words importing the singular number will include the plural and vice versa, unless the context otherwise indicates. All references to any exhibit or document will be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity will be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this Contract. The terms "include", "includes", or "including", when followed by one or more examples, denote a nonexclusive list.

C. Severability.

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

D. Interpretation/Rules.

1. Intent of Plans and Specifications.

- a. The intent of the plans and specifications is to describe the Work that the Contractor will undertake to fulfill the requirements of the Contract. The Contractor must perform all Work as provided in the Contract Documents and such collateral, and incidental Work as required, necessary and/or convenient to complete the Work in accordance with the Contract Documents. The Contractor must furnish all required materials, equipment, tools, labor, temporary light and power, shop drawings, installation drawings, working drawings, and incidentals, unless otherwise provided in the Contract, and will include the cost of all such items in the Contract unit and lump sum prices for the several units of Work.
- b. The specifications and plans are not intended to cover every detail of materials, parts, or construction. The Contractor must furnish all materials, parts, and labor necessary to complete the Work, whether or not said details are particularly shown or specified, all at no additional cost to the City.
- c. Except as otherwise expressly stated in the Contract Documents, the Contractor's bid price(s) includes, and the Contractor must provide and furnish, all items necessary and incidental to the Work and the Project, including but not limited to all materials, parts, labor, supervision, coordination, administration, equipment, tools, temporary light and power, shop plans, working drawings, and incidentals required by the Contract Documents and desirable for the full completion of the Work, whether or not particularly shown, described, or specified in the Contract Documents; and the Contractor's bid price(s) includes all costs relating to, or associated with, the foregoing including but not limited to all direct costs, overhead, and profit. No terms of the Contract Documents, which more specifically indicate that the Contractor will bear the costs of an item or which more specifically indicate that an item will be performed at no additional cost to the City, will be construed or interpreted to in any way limit the foregoing.
- d. Wherever the imperative form of address is used, such as "perform the excavating", "provide equipment required", "remove obstructions encountered", "furnish and install reinforcing steel bars", it is understood and agreed that such address is directed to the Contractor.
- e. "Provide" as used in these specifications means furnish and install.
- f. Unless a contrary meaning is specifically noted elsewhere, words "as required," "as directed", "as permitted", and similar words mean that requirements, directions of, and permission of the Commissioner are intended; similarly the words "approved", "acceptable", "satisfactory", or words of like import, mean "approved by", "acceptable to", or "satisfactory to" the Commissioner. Words "necessary", "proper", or words of like import as used with respect to extent, conduct, or character of Work specified shall mean that Work must be conducted in a manner, or be of character which is "necessary" or "proper" in the opinion of the Commissioner.
- g. Wherever the words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactory", or words of like effect and import are used, they mean, unless otherwise particularly herein specified, approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the Commissioner.
- h. The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. The Contractor shall be responsible for all segregation of Work between the trade or craft jurisdictional limits.

- i. As provided in Section IV, before the Contractor physically begins the Work, the Contractor must check the City's plans and specifications. Should any errors, discrepancies or omissions be found in these plans and specifications or any discrepancy found between the Contract Drawings and the physical conditions at the site or in any subsequent drawings that may be provided thereafter, the Contractor must notify the Commissioner, in writing, within 48 hours of discovering the error, discrepancy or omission. Any Work done after such discovery, unless authorized by the Commissioner, will be done at the Contractor's expense. The Contractor will not be allowed to take advantage of any error, omission, or discrepancy in the Contract Documents.
- j. The Contractor will be furnished additional copies of the plans and specifications at the cost of reproduction. Specifications by organizations other than the City to which reference is made in the City's Technical Specifications will be obtained by the Contractor at its expense.
- k. The Contractor must keep on hand at the work site, for reference, a complete set of specifications for the Work, a complete set of all plans of the Work, copies of all plans furnished by the Contractor, all additional and revised plans furnished by the City and all orders issued to the Contractor by the Commissioner that relate to the Work.

2. Precedence of Documents.

Unless otherwise noted in the Requirements for Bidding and Instructions for Bidders (see Part 1), the following shall govern the Interpretation of the Contract in all cases of conflict or inconsistency therein.

In the event a seeming conflict between provisions within one or more of the items in the Contract documents is discovered, an interpretation which reconciles the otherwise inconsistent and/or conflicting provisions, without ignoring either or any of them, shall be preferred.

If such reconciliation is not possible, then the various Contract documents shall be deemed to govern in the following order of precedence:

- a. First: The General Conditions (Part 2) as issued or subsequently amended.
- b. Second: The Requirements for Bidding and Instructions for Bidders found in Part 1 as issued or subsequently amended.
- c. Third: Technical specifications (Part 3) as issued for bid or as subsequently amended.
- d. Fourth: Contract plan and drawings as issued for bid or as subsequently amended.
- e. Fifth: All other Contract Documents.

In the event of conflict or inconsistency between the Contract Documents as provided to the Contractor on CD and the Official Printed Copy of the Contract Documents, the Official Printed Copy shall govern.

E. Entire Agreement.

The Contract Documents, and the exhibits attached to them and incorporated thereby, shall constitute the entire agreement between the parties with respect to the subject matter hereof, and no other oral or written understandings, representations, inducements, consideration, promises, or interpretations will be implied or impressed upon this Contract that are not expressly addressed herein and therein.

**END OF I**

## **II. PROJECT ORGANIZATION**

### **A. Owner.**

1. The City of Chicago is the Owner of the Project. The City possesses and operates the Airport, which is on City property. The City possesses the power and authority to lease premises and facilities and grant other rights and privileges at the Airport.
2. **Personal Liability of Public Officials:** In carrying out any of the provisions of this Contract or in exercising any power or authority granted to them thereby, there will be no liability upon the Chief Procurement Officer, Commissioner, their authorized representatives, or any employee of the City, either personally or as officials of the City, it being understood that in such matters they act as representatives of the City.

### **B. The Commissioner.**

Except where otherwise specified in this Contract, for the purposes of this Contract, the Commissioner, or any successor office to the Commissioner, will represent the City in all matters relating to the Contractor's performance of its Work, such as to the quality and acceptability of materials furnished and Work performed, rate of progress of the Work, the amount and quality of Work performed and materials furnished and the estimates thereof. The Commissioner's determination with respect to such matters is a condition precedent to the right of the Contractor to receive money due under the Contract, provided that the Contract Modifications are approved in accordance with Article X.

### **C. The Chief Procurement Officer.**

The Chief Procurement Officer has the statutory authority to solicit and award this Contract for the City and will represent the City in most administrative matters relating to the Contract, such as approval of Subcontractors and approval of MBE/WBE plans.

### **D. Construction Manager.**

The Construction Manager is the organization(s) or entity(ies) that the City has retained to oversee the construction of projects at the City's Airports. Among the duties relating to this Contract, the Construction Manager will inspect the Contractor's Work to verify that it is in compliance with the Contract Documents and act as a point of contact where indicated in the Contract Documents. The Construction Manager will have no authority to issue approvals that the Contract requires the Contractor to obtain from the Commissioner, to bind the City contractually, or to make modifications to this Contract. In carrying out any of the provisions of this Contract or in exercising any power or authority granted to it, there will be no liability upon any officer, employee, or authorized representative of the Construction Manager, either personally or as officials of the Construction Manager, it being understood in such matters they act as representatives of the Construction Manager.

### **E. Architect/Engineer.**

The City has retained an Architect/Engineer for the project whose name appears on the plans (Part Three of the Contract Documents). The Contractor will have no direct contact with the Architect/Engineer except as authorized by the Commissioner. The Architect/Engineer is not authorized to make changes to designs approved by the City and included in the Contract Documents without the express direction of the City pursuant to a Contract Modification.

### **F. Testing Consultants.**

The City may retain one or more consultants to perform testing of materials provided by the Contractor and incorporated into the Project to ensure compliance with Contract requirements. All such consultant(s) will make recommendations to the Commissioner and Chief Procurement

Officer but does not have authority to approve materials or substitutes which authority is reserved to and requires approval of the Commissioner and/or Chief Procurement Officer.

G. Contractor.

1. Contractor's Responsibility for Work:

- a. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.
- b. The Work shall be under the charge and care of the Contractor until Final Completion of the Project, Milestone, or phase, as determined by the Commissioner, including all "Punch List" Work, unless otherwise specified in the Contract Documents. The Contractor will assume all responsibility for injury or damage to the Work by action of the elements and fire or from any other causes whatsoever, whether arising from the execution, or from the non-execution, of the Work. The Contractor must rebuild, repair, restore and make good, at its expense, all injuries or damages to any portion of its Work occasioned by any of the above causes before its completion and final acceptance.
- c. When equipment or materials are furnished to the Contractor by the City for the Contractor's use or inclusion in the Work, the Contractor's responsibility for all such equipment and materials will be the same as for materials furnished by the Contractor.
- d. The Work will not be considered as completed and accepted until a written notice from the City confirming the Final Completion has been received by the Contractor.

2. Subcontractors:

- a. Except as otherwise provided in the Contract, all transactions of the City and the Commissioner will be with the Contractor; Subcontractors shall be recognized only in the capacity of employees or workers.
- b. Contractor further will implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by all provisions of the Contract.
- c. As provided in Article V, all Subcontractors must be approved by the Chief of Procurement Officer. The Contractor may not make any substitution for a Subcontractor that has been accepted by the Chief Procurement Officer, unless the substitution is acceptable to the Chief Procurement Officer. All requests to subcontract must be submitted on the form approved by the Commissioner and Chief Procurement Officer.
- d. The Contractor is responsible for all Subcontractors' Work.
  - (1) There is no privity between Subcontractors and the City; Subcontractors have no rights as third-party beneficiaries under this Contract.
  - (2) The Contractor will require the Subcontractors to communicate with the City through the Contractor only.

**END OF II**

### III. PROPERTY

#### A. Ownership of Drawings and Documents.

1. All drawings, specifications, and copies thereof furnished by the Commissioner or CPO are the property of the City and are not to be used on other work.
2. The City will provide to the Contractor, without charge, one (1) CD of all Contract Documents, 2 complete full size drawing sets and two (2) complete half size drawing sets.
3. All documents, data, studies, reports, and instruments of service prepared for or by the City under this Contract, are the property of the City. During the performance of its Work, the Contractor will be responsible for any loss or damage to documents while in the Contractor's possession or the possession of a Subcontractor and any such document so lost or damaged must be restored at the expense of the Contractor.
4. The Contractor will deliver, or cause to be delivered, at any time during the term of this Contract all documents, including but not limited to drawings, models, specifications, estimates, reports, studies, maps, and computations, prepared by or for the City, under the terms of this Contract, to the City promptly upon reasonable demand thereof or upon termination or completion of the Work hereunder. In the event of the failure by the Contractor to make such delivery, the Contractor will pay to the City damages the City may sustain by reason thereof, including consequential damages.
5. All Project Record Documents and deliverables, and any other information or data, whether in hard copy or in electronic format, (collectively, "Data") prepared by or provided to the Contractor under this Contract are confidential. The Contractor must not issue publicity or news releases nor grant press interviews and, except as may be required by law during or after the performance of this Agreement, disseminate any information regarding the Project without the prior written consent of the Commissioner. In the event the Contractor is presented with requests for documents by any administrative agency or with subpoena duces tecum regarding any Data, the Contractor must immediately give notice to the Commissioner and to the Corporation Counsel of the City of Chicago with the understanding that the City shall have the opportunity to contest such a process by any means available to it before such Data are submitted to a court or other third party; provided, however, that the Contractor shall not be obligated to withhold such delivery beyond that time as may be ordered by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

#### B. Right of Entry.

1. The Contractor, and any of its officers, employees, agents, and Subcontractors, shall be permitted to enter upon any part of the Project site owned by the City in connection with the performance of the Work hereunder, subject to the terms and conditions contained herein and those rules established by the Commissioner. The Contractor will provide advance notice to the Commissioner of any such intended entry. Consent to enter upon all or any part of the Project Site given by the Commissioner will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the City.
2. The Contractor must use, and will cause each of its officers, employees, agents, and Subcontractors, to use the highest degree of care when entering upon property owned by the City, and must comply and will cause each of its officers, employees, agents, and Subcontractors, to comply with any and all instructions and requirements for the use of such property. Any and all claims, suits, judgments, costs, or expenses, including reasonable attorneys' fees, arising from, by reason of, or in connection with any such entry shall be treated in accordance with the applicable terms and conditions of the Contract, including without limitation the indemnification provisions.



3. Damage to City Property: If the Contractor causes damage to City property, the Contractor must at the option of the Commissioner either 1) pay the cost of repair of the damage or 2) repair or replace the damage. To the extent that the City undertakes repair or replacement, the Commissioner will have the right to a set off against the payments to the Contractor for the cost of repairs or replacement if the City undertakes repair or replacement of the damaged property or has it done by others.

C. Information Provided by the City.

Surveys, soil borings, geotechnical information, data, or plans generally describing the unimproved land or existing structures at the site may be provided to the Contractor by the City. Such information is not warranted by the City to be accurate. The Contractor will not be entitled to rely on it. When such information is provided by the City and it appears on Contract Documents prepared by the Architect/Engineer, the Contractor acknowledges that the Architect/Engineer and City have not verified such information. Site plans prepared by the Architect/Engineer are based on surveys performed by consultants that have not been verified by the City and the Architect/Engineer. Site plans do not constitute any representation by the Architect/Engineer and City to the Contractor of site boundaries or characteristics. Information provided by the City may be based upon either the O'Hare Coordinate System or the O'Hare Monument System. Contractor is responsible for identifying the datum system used and, if it is the O'Hare Coordinate system, is responsible for converting that information to the O'Hare Monument System.

D. Site Conditions.

1. If conditions encountered at the site are:
  - a. Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or
  - b. 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 pursuant to the Public Construction Contract Act, 30 ILCS 557, the Contractor will take no action to disturb the area until providing written notice to the Construction Manager immediately, and receiving notice from the Construction Manager as to how and when to proceed.
2. If the conditions differ materially from those indicated in the Contract Documents and could not have been known to the Contractor at the time the Contract was bid, and such conditions will cause a material increase or decrease in the Contractor's cost of, or time required for, the performance of any part of the Work, an equitable adjustment in the Contract Amount or Contract time or both, will be made based upon Article X, "Changes In The Work."
3. The Contractor must follow the requirement of written notice in Section III. D. 1. above and the requirements set out in Section XVII. A. Claims, regarding a claim for changed site conditions. The Contractor must also provide written Notice of Claim regarding the changed site condition to the Construction Manager immediately after its discovery. The Notice of Claim for the changed site conditions must state the nature of the changed site condition, its location, and the work that is affected by it. The Contractor's failure to provide the written notice to the Construction Manager within one day after discovery of the changed site condition constitutes a waiver of any Claim that Contractor may have relating to the changed site condition, a waiver of its right to file a Claim under Article XVII.A and a waiver of its right to file a dispute to the Chief Procurement Officer under Article XVII.B.

E. Permits and Licenses.

1. Wherever the Work requires the obtaining of permits from the City of Chicago or other public authorities, triplicate copies of such permits must be furnished to the Construction Manager by the Contractor hereunder before the Work covered thereby is started.
2. Except as otherwise provided in paragraph 2 below, the Contractor will obtain, at its own expense, all permits and licenses necessary to carry out the Work. Unless an Allowance for Permit Fees has been established in Book 1 of the Contract Documents, there will be no separate fee reimbursement from the City to the Contractor in connection with Permits and Fee requirements and all costs therefore are considered as incidental to the project.
3. Permits required from the Metropolitan Water Reclamation District of Greater Chicago, the Illinois Division of Waterways, and the U.S. Army Corps of Engineers will be obtained by the City.
4. The special use of or removal, alteration, or replacement of certain City owned facilities and appurtenances such as traffic signs, trees, sewers, hydrants, bridges and viaducts, which will be required as a consequence of the Contractor's Work, will be subject to the applicable Municipal Ordinances. It will be the Contractor's responsibility to obtain all the necessary permits and pay the associated fees. Copies of such permits will be furnished to the Construction Manager by the Contractor before the Work covered is started. No payment will be made for Work performed without the required permits unless authorized by the City. Information with regard to the above may be obtained by contacting the appropriate City Departments.
5. Water System Work: If water from a City hydrant is necessary to the execution of the Work, the Contractor, with approval of the Construction Manager, will obtain a hydrant permit from the Department of Water Management of the City of Chicago. Before starting Work, the Contractor will pay to the Department of Water Management of the City of Chicago a fee for water to be used as set forth in the Municipal Code of Chicago and its amendments to date. Payments are to be made to: Department of Water Management, Bureau of Billings & Customer Services.
6. Sewer System Work: The construction, repair, adjustment, or cleaning of any subsurface structure designed to collect or transport storm and/or wastewater, either in private property or in the public way, will require a permit issued by the Department of Water Management.
  - a. The construction, repair, adjustment, or cleaning of any subsurface structure designed to collect or transport storm and/or wastewater, either in private property or in the public way, will require a permit issued by the Department of Sewers, (Sewers and Drains),.
  - b. Sewer Permits for doing any of the above described Work will be issued to Sewer Drain Layers currently licensed by the Department of Sewers. Contractor must be, or must subcontract with, a licensed Sewer Drain Layer for such Work.
  - c. When applying for a permit, a Contractor must submit two (2) sets of plans which show all new underground sewer work inside and around the Project with a clear site or location plan together with an estimate of the sizes and quantities of sewer to be installed.
  - d. Contractor must arrange for permits and/or inspection at least forty-eight (48) hours prior to starting work.

- e. A copy of the permits must be on the jobsite prior to starting construction.
  - f. Failure to obtain permits prior to starting construction could result in the revocation of the drain layer's license.
  - g. Plans for large projects (over 400 feet of sewer work) are to be brought in for examination and review by the City's Construction Manager at least two (2) days prior to application for the issuance of permits.
7. Traffic and Parking Sign Removal and Replacement: When sign removal and replacement is not a pay item of the Contract, the City of Chicago will remove and reinstall any sign as may be required; however, the Contractor will be responsible for all fees relative to the removal and replacement of all of the City's traffic and parking signs. The Contractor must advise the Bureau of Traffic Engineering and Operations, in writing, of the location of each sign to be removed by specifying its distance from the property line of the nearest cross street. Each sign legend should also be stated. The Contractor must provide this information at least five (5) business days prior to removal. The Contractor will also advise the Bureau of Traffic Engineering and Operations, in writing, of when signs may be reinstalled as soon as this date is known.

F. No Lien Provision.

- 1. The Contractor must notify its Subcontractors that no mechanics' liens under The Illinois Public Mechanics' Lien Act, 770 ILCS 60/23, will be permitted to arise, be filed, or maintained against public funds, the Project, or any part thereof or any interest therein, or any improvements thereon, or against any monies due or to become due to the Contractor on account of any work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Project; and the Contractor, for itself and its Subcontractors, does hereby expressly waive, release, and relinquish such liens and all rights to file or maintain such liens; and agrees further that this waiver of liens and waiver of the right to file or maintain such liens will be an independent covenant.
- 2. If any of the Contractor's Subcontractors, employees, officials, agents, or any other person directly or indirectly acting for, through, or under any of them files or maintains a lien or claim as described in paragraph "1" above, the Contractor agrees to cause such liens and claims to be satisfied, removed, or discharged within thirty (30) days from the date of filing thereof; provided, however, that the City may extend the thirty (30) day period if the City determines that such lien claim cannot be so satisfied, removed, or discharged in such period and that the Contractor is proceeding diligently to cause such liens or claims to be satisfied, removed, or discharged. The City will have the right, in addition to all other rights and remedies provided under this Contract or by law, to cause such liens or claims to be satisfied, removed, or discharged by any means at the Contractor's sole cost, such cost to include reasonable legal fees.
- 3. The Contractor must give, or cause to be given, a copy of these provisions to all Subcontractors and will include these provisions in all contracts with Subcontractors and/or give written notice of same to all Subcontractors or other persons having oral or written agreement with such Subcontractors.

G. Ownership of Property and Builders Risk.

- 1. The City will be and become the owner of each of the improvements, equipment and fixtures which has been installed or constructed by the Contractor as part of the Project or for which the City has paid Contractor to store in anticipation of installation or construction. The City's title shall be free and clear of liens, claims, security interests or other encumbrances, upon the earlier of installation, payment therefore or Final Completion of the Project. However, transfer of title to the City shall not relieve Contractor of any of its responsibilities under this Contract with respect to Work in progress.

2. Regardless of passage of title, the risk of loss to any of the Work (and to any goods, materials, equipment and furnishings that are provided or are to be provided by the Contractor under the Contract) shall remain with the Contractor until the date of Final Completion of the Project. If any of the Work (or any goods, materials, equipment and furnishings that are provided or are to be provided by the Contractor under the Contract) is destroyed, mutilated, defaced or otherwise damaged, by any cause whatsoever, the Contractor shall repair or replace the same at no extra cost to the City. Any performance bond or insurance protection required by the Contract or otherwise provided by the City or the Contractor shall in no way limit the responsibility of the Contractor under this section.

**END OF III**

#### **IV. SCOPE OF WORK**

##### **A. The Scope of Work for the Project.**

The Work that the Contractor must provide under this Contract includes, but is not limited to, the Work described in Part Three of the Contract Documents. The Contractor must provide the Work in accordance with the standards of performance set forth in the Contract Documents.

##### **B. Errors or Discrepancies in Contract Documents.**

Before the Contractor begins the Work, the Contractor must check the City's plans and specifications. Should any errors, discrepancies, or omissions be found in these plans and specifications or any discrepancy found between the Contract Drawings and the physical conditions at the site or in any subsequent drawings that may be provided thereafter, the Contractor must notify the Commissioner, in writing, immediately. Any Work done after such discovery, unless authorized by the Commissioner and Chief Procurement Officer, will be done at the Contractor's expense. The Contractor will not be allowed to take advantage of any error, omission, or discrepancy in the Contract Documents.

##### **C. Requests for Information (RFI).**

All Contractor questions and requests for clarifications of the Contract Documents must be addressed through a Request for Information (RFI). RFIs will be generated by the Contractor and answered by written directive of the Commissioner.

##### **D. City Directed Value Engineering.**

The City reserves the right to value engineer the Work by modifying the Contract Documents to provide innovative, alternative, lower cost construction without impairing the essential functions and characteristics of the Work including, but not limited to, service life, reliability, economy of operation, ease of maintenance, necessary standardized features, desired appearance, or design standards ("City Directed Value Engineering"). Any such changes will be incorporated through a Contract Modification pursuant to Article X - Changes in Work. Payment for the Work will be made pursuant to Article IX. For City Directed Value Engineering, the Contractor will not be eligible to receive any Value Engineering Incentive.

##### **E. Construction Operations Plan and Procedures.**

###### **1. Construction Operations Plan.**

Within fifteen (15) days after the Contract Award date, the Contractor must submit to the Commissioner for review the order of procedure the Contractor proposes to follow in performing the Work, a proposed construction schedule, a list of equipment to be used and a general description of the procedures, methods, structures and equipment to be used ("Construction Operation Plan"). An Airport traffic management plan must also be submitted as part of the Construction Operation Plan, if required by the Commissioner. Work will begin only after the Contractor's proposed Construction Operation Plan has been approved by the Commissioner in writing. It is understood by the Contractor that a reasonable amount of time will be required by the Commissioner for the examination of said Construction Operation Plan. As Work progresses, changes or modifications in such procedure and Baseline Schedule, or in such methods, structures and equipment may be required by the Commissioner. In such event, upon notice from the Commissioner to the Contractor, further Work must be performed only in accordance with the changed Construction Operation Plan.

- a. Procedures, Methods, Structures and Equipment: No later than ten (10) days prior to starting Work, the Contractor must submit for the Commissioner's approval a detailed description of procedures, methods, structures and equipment for the Work that is consistent with the approved Construction Operation Plan. The Contractor will

determine the methods to be employed, the procedures to be followed, the plant, falsework, shoring, bracing and other temporary structures and equipment to be used in the Work, subject to the requirements of the Contract Documents and the approval of the Commissioner. The Contractor must furnish all material and supplies, plant, heat, power, staging and falsework, equipment, tools, implements, and all material and appliances of every sort or kind that may be necessary for the full and complete carrying out of this Contract, whether temporary or permanent and whether or not incorporated into the Work. The Contractor must provide, as part of its submittal, drawings and calculations for all equipment, falsework, shoring, bracing, and other temporary structures or temporary services required for the Work, designed, signed and sealed by the appropriate (i.e. Structural, Mechanical, Electrical, Civil, etc.) Illinois licensed engineer. As Work progresses, changes or modifications in the procedures, methods, structures or equipment may be required by the Commissioner. In such event, upon notice from the Commissioner to the Contractor, further Work must be performed only in accordance with the changed procedures, methods, structures and equipment.

- b. Commissioner Approval: The Commissioner, in the Commissioner's sole discretion, may disapprove, reject or require modification of any proposed or previously approved Construction Operation Plan or procedures, methods, structures or equipment that the Commissioner believes: (i) is unsafe for the Work, for other activities being carried on in the vicinity, for other structures, for the public, or for workers, engineers and inspectors employed thereon; (ii) will result in undesirable settlement of the ground, (iii) will not provide for the completion of the Work by the Contract Completion Date, (iv) is contrary to any other requirement of this Contract; or (v) will adversely impact Airport Security, Airport Operations, or any function of the Airport, or Airlines.
- c. Contractor Responsibility: It is expressly agreed that the Commissioner's acceptance or approval of the Construction Operation Plan and any procedure, method, structure, or equipment submitted or employed by the Contractor, will not in any manner relieve the Contractor of responsibility for the safety, maintenance, and repairs of any structure or Work, or for the construction, maintenance and safety of the Work hereunder, or from any liability whatsoever on account of any procedure or method employed by the Contractor, or due to any failure or movement of any structure or equipment furnished by the Contractor. If, even though implemented in accordance with a Construction Operation Plan and procedures, methods, structures and equipment approved by the Commissioner, any procedure, method, structure or equipment used by Contractor fails in any manner whatsoever, such failure will in no way form the basis for any claim for additional compensation, damages, expenses, an extension of time for completion of this Contract, or for material, labor or equipment required for repairing or rebuilding the Work or any other property that may have been damaged by the failure of any such procedure, method, machinery, structure or equipment.

## 2. Sustainability.

The CDA encourages the Contractor to implement the best possible environmental, social, and fiscally responsible practices. The Sustainable Airport Manual ("SAM") has been developed as an integral part of the overall sustainability standards for the CDA and is incorporated into this Contract by reference. Contractors are strongly encouraged to incorporate as many sustainability elements into their project as are feasible. The SAM is meant to supplement existing federal, state and/or local regulatory requirements with additional best practice sustainability strategies and considerations. The SAM does not supersede any existing standards, regulations, codes, guidelines or practices (visit [www.airportsgoinggreen.org](http://www.airportsgoinggreen.org) to obtain the latest version of SAM).

- a. Sustainability Requirements: Within thirty (30) days from the Notice to Proceed, the Contractor must submit to the Commissioner all required pre-construction sustainability plans, equipment/material lists, and estimates as detailed in the Part III,

Technical Specifications. Pre-construction submittals required by the Technical Specifications may include: Diesel Emission compliance Plan Pre-Construction Form; Local/Regional Materials Pre-Construction Estimate; Recycled Content Pre-Construction Estimates; Construction Waste Management Plan Pre-Construction Estimate of Construction & Debris Form. Failure to submit the required pre-construction documentation will result in rejection of the first payment for Mobilization as detailed in Part III Technical Specification – M-101 “Mobilization”.

- b. Submittals: Monthly and/or Project Completion submittals as detailed in the Part III Technical Specifications must be submitted as required. Failure to submit the required submittals and documentation may result in non-payment.
3. The Contractor must furnish all material and supplies, plant, heat, power, staging and falsework, equipment, tools, implements, and all material and appliances of every sort or kind that may be necessary for the full and complete carrying out of this Contract whether temporary or permanent and whether or not incorporated or to be incorporated into the Work.
4. Security Personnel: The Contractor must furnish security personnel not only to protect the public and those who Work at or in the vicinity of the Work under this Contract, but to protect all materials, tools, machinery and equipment and all Work performed by the Contractor until said Work has been completed and accepted by the City. The cost of security personnel is incidental to the contract unless otherwise specified in the Contract Documents.
5. Batch Plant: A batch plant may be authorized at the Airport in Part Three, otherwise, the Contractor must seek permission to have a concrete or asphalt batch plant on Airport property by making a written request to the Construction Manager for submission to the Commissioner and Director. It is within the absolute discretion of the Commissioner whether to allow a batch plant on Airport property and denial of permission is not subject to a claim or dispute under Article XVII of the General Conditions. If permission is provided, the use of the batch plant is subject to all conditions set by the Commissioner to which the Contractor must agree in writing. The Contractor must obtain and follow the requirements of all federal, state and local permits, copies of which must be provided to the Construction Manager, before the plant is placed in operation. The plant must be dismantled and removed from the Airport when directed by the Commissioner. The Contractor's failure to follow the Commissioner's direction to remove the plant or to comply with the conditions for use of the plant, set by the Commissioner, constitutes a default under the Contract. Only adequate and safe procedure, methods, structures, and equipment will be used. Any costs related to land leasing, rental fees, or operations will be incidental to the Contract.
6. Verification of Dimensions, Cutting & Patching.
  - a. Wherever the Work is required to connect to existing improvements, the Contractor must take complete field measurements affecting all construction in this Contract and will be solely responsible for the proper fit between the Work and existing structures or appurtenances.
  - b. The Contractor must do all cutting, patching, or fitting of Work that may be required to make the Work under this Contract and the existing improvements come together and fit properly. In the event field measurements contradict the design drawings, Contractor must submit discrepancies, via Request for Information, to the Commissioner for clarification.
7. Contractor's Layout of the Work. The Contractor is responsible for the correct lay-out and accurate fitting of all parts of its Work. All labor, materials, and other expense necessary for, or incidental to, the setting and maintaining of lines and grades (exclusive of the tasks of establishing the original reference base line and bench marks which must be performed

by the City) will be furnished by the Contractor at its own expense. All Contractor layout and control survey work must be performed by a professional Land Surveyor registered in the State of Illinois.

8. Occupancy Interferences.

- a. The Contractor must utilize a method of Work which interferes as little as possible with the normal conduct of Airport Operations or business in or around the Airport.
- b. The building or structures may be in full time use and operation and will continue in normal use during application and installation of the Work. Building facilities, including heating, ventilation, and air conditioning, lighting and plumbing, will not be interrupted in the occupied areas, except as required for making connections to power sources as hereinafter specified.
- c. The Contractor will serve written notification to the Commissioner requesting any anticipated interruption in facilities at least two (2) weeks prior to disruption of services, allowing for temporary relocation of personnel, operations, and equipment during the Work. The Contractor must provide any temporary facilities deemed necessary by the Commissioner due to a disruption of services. The Commissioner, in his or her sole discretion, will determine the procedures, times of day and dates the Contractor may accomplish the Work and may reject or modify the Contractor's request.
- d. Deliveries and Storage of all material and/or equipment must be located in areas as designated or approved by the Commissioner, scheduled in such manner to minimize interference with the normal conduct of business in or around the occupied portions of the building and airline or vehicular areas.

**END OF IV**



## **V. SUBCONTRACTING & ASSIGNMENT**

### **A. No Assignment of Contract.**

The Contract must not be assigned or any part of the same subcontracted without the written consent of the Chief Procurement Officer. If the Chief Procurement Officer provides consent, such consent does not relieve the Contractor from any of its obligations or change the terms of the Contract, and Contractor shall remain responsible for satisfactory performance of all work undertaken by the assignee or Subcontractor.

### **B. No Assignment of Contract Funds.**

The Contractor will not transfer or assign any Contract funds or claims due or to become due without the prior written consent of the Chief Procurement Officer and Comptroller. The transfer or assignment of any Contract funds, either in whole or in part, or any interest therein, which will be due or to become due to the Contractor, without the prior written consent of the Chief Procurement Officer and Comptroller, is void so far as the City is concerned.

### **C. Subcontracts.**

1. All Subcontractors are subject to the approval of the Chief Procurement Officer before they may provide material, labor or services on the Project. The Contractor, upon entering into any agreement with a Subcontractor that has been approved by the Chief Procurement Officer must furnish the Chief Procurement Officer with one (1) copy of a written contract evidencing such agreement signed by the Contractor and Subcontractor. Copies of all written Subcontractor agreements and Purchase Orders for Suppliers must be provided to the Chief Procurement Officer within fifteen (15) days of the Notice to Proceed. All subcontracts must be in writing, must require each Subcontractor to be bound by the terms of this Contract, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by this Contract, assumes toward the City. All subcontracts must require that any services to be performed will be performed in strict accordance with this Contract and must provide that the Subcontractor is bound by and subject to the requirements of this Contract, whether or not a particular provision specifically mentions Subcontractors, and will provide that the City's rights are not thereby prejudiced. All Contractors and Subcontractors must have a Vendor Number. Vendor number requests shall be made on the form provided by the Commissioner.
2. The Contractor 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 Contractor's default or in the event of early termination. The Contractor must require each of its Subcontractors (including material suppliers) to consent to a collateral assignment to the City of its respective subcontract with the Contractor. The Contractor's subcontracts must include language stating, "Contractor has collaterally assigned this subcontract to the City of Chicago, effective upon written assumption of such assignment by the City in the event of Contractor's default or early termination of Contractor'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 Contractor for any compensation or other obligations arising under the subcontract prior to such date."
3. Subcontracts may contain different provisions than are provided herein with respect to payments, schedules, and matters not affecting the quality or timely completion of the Work. The subcontract must preserve the rights of the City under this Contract with respect to the Work performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor must require each Subcontractor to enter into similar subcontracts with its Subcontractors. The Contractor will make

available to each Subcontractor, prior to the execution of such subcontract, copies of this Contract to which the Subcontractor will be bound by this paragraph.

D. City's Right to Assign.

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

**END OF V**

## **VI. QUALITY OF WORKMANSHIP, EQUIPMENT AND MATERIALS**

### **A. Standards of Performance.**

1. Without limiting Contractor's obligations to complete the Project in accordance with the Contract Documents, the Contractor must perform, or cause to be performed, all of the Work required by the Contract with that degree of skill, care, and diligence normally exercised by experienced contractors performing that type of work in projects of a scope and magnitude comparable to the Project. The Contractor must assure timely and satisfactory completion of the Work. The Contractor must at all times act in the best interests of the City. The Contractor must perform, or cause to be performed, all Work in accordance with the terms and conditions of this Contract and to the reasonable satisfaction of the Commissioner.
2. The Contractor will further perform, or cause to be performed, all Work hereunder according to those standards for Work at the Airports promulgated by CDA, the FAA, and any other interested Federal, State, or local governmental units.

### **B. Compliance with Contract Documents.**

The Contractor must supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor is responsible for ensuring that the Work complies with the Contract Documents.

### **C. Correction of Work.**

1. The Contractor, when directed in writing by the Commissioner, must promptly reperform, correct, or remove all Work identified to be defective or as failing to conform to the standards set forth in Section VI A above or the Contract Documents, whether observed before or after Substantial Completion of the Contractor's Work and whether or not fabricated, installed, or complete. The Contractor must bear all costs of correcting such defective or nonconforming Work, including costs associated with removing and reinstalling any nonconforming Work and compensation for any additional services made necessary thereby.
2. If the Contractor does not proceed with re-performance, correction, or removal of such defective or nonconforming Work after written notice from the Commissioner and within the time period designated, the Commissioner may correct or remove it. In addition, the Commissioner may store at the expense of the Contractor, portions of Work that have been removed as needed for others to undertake the corrective Work. If the Contractor does not pay the cost incurred for any such removal and storage within ten (10) days thereafter, the Commissioner may upon ten (10) additional days' written notice from the Chief Procurement Officer, sell such defective or non-conforming Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Commissioner's additional Work or services of City employees or others made necessary thereby. If such proceeds of sale do not cover all costs the Contractor should have borne for removal and correction of the Work, the difference will be charged to the Contractor, deducted from any amounts due the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor must pay the difference to the City.
3. Work done outside the Contract limit lines shown on the Contract Drawings or any work performed outside the scope of the Contract without a Field Order or Contract Modification will be considered as unauthorized and at the expense of the Contractor and will not be measured or paid for. Upon direction of the Commissioner, work so done must be removed or replaced and those areas restored at the Contractor's expense.

4. Neither the letter of Final Completion, nor any provisions in the Contract Documents will relieve the Contractor of responsibility for nonconforming Work, faulty materials, equipment or workmanship and, unless otherwise specified, the Contractor will remedy any defects due thereto and pay for any damage to other Work resulting therefrom. The Commissioner will give written notice of such observed defects with reasonable promptness.

D. Failure To Proceed With Directed Work.

In case of Contractor's failure to execute work in accordance with the Contract or a Field Order, the Commissioner may give Contractor written direction to perform the work within the period required by the Commissioner. If the Contractor fails to comply with such written direction, the Commissioner may give notice in writing to the Contractor and, with the approval of the Chief Procurement Officer, may direct others to proceed to execute such Work as may be deemed necessary, and the cost thereof will be deducted from compensation due or which may become due the Contractor under the Contract.

E. Materials.

1. Quality of Materials.

- a. Unless otherwise specified in the Contract Documents, all material incorporated into the Project must be new and must be incorporated in such manner as to produce completed construction, which is in conformance with the Contract Documents and acceptable in every detail to the Commissioner. The Contractor must certify on the "Request For Inspection of Material" form designated by the Commissioner that all materials and equipment to be used in the project comply with all Contract requirements. Only materials which conform to the requirements of the Contract Documents shall be incorporated in the Work.
- b. In the absence of a definite specification, materials must be the best of their respective kinds with properties best suited to the Work required. Inspection of materials shall be as specified in Article XIII, "Testing and Inspection".

2. Source of Materials.

- a. The Contractor must notify the Commissioner in writing as soon as possible, but no later than thirty (30) days, after the Contract has been awarded of the source (or sources) from which the Contractor expects to obtain the various construction materials. The source of supply of each material used must be approved by the Commissioner before delivery is started. If sources previously approved are found to be unacceptable at any time and fail to produce materials satisfactory to the Commissioner, the Contractor must furnish materials from other approved sources.
- b. If the Contractor seeks to investigate new sources of supply, the Contractor must furnish without charge such preliminary samples as the Commissioner may require. Tests may be made on these preliminary samples and reports rendered, but it is understood that such tests are for information purposes only and that the tests will not be construed as a guarantee of acceptance of any alternate supply of materials.

3. Substitution of Materials.

- a. Except for requests for substitution that were identified in the Contractor's bid and approved by the Commissioner and Chief Procurement Officer in accordance with Part One of the Contract Documents, requests for substitution for specified products or manufacturers will be considered only in case of product unavailability or other conditions beyond the reasonable control of the Contractor, or due to City Directed value engineering.

Each request for substitution must be submitted separately and must include:

- (1) Complete data substantiating compliance of proposed substitution with requirements stated in the Contract Documents, including:
    - (a) Product identification, including manufacturer's name and address.
    - (b) Manufacturer's literature identifying:
      - i) Product description
      - ii) Reference standards
      - iii) Performance and test data
    - (c) Samples, as applicable.
    - (d) Name and address of similar projects on which the product has been used, and date of each installation.
  - (2) Itemized comparison of the proposed substitution with product specified; list significant variations.
  - (3) Data relating to changes in Baseline Schedule.
  - (4) Any effect of substitution on other parts of the Work, any Subcontractors, or any separate contracts.
  - (5) List of changes required in other Work or products.
  - (6) Accurate cost data comparing proposed substitution with product specified, including amount of any net change to Contract Price.
  - (7) Designation of required license fees or royalties.
  - (8) Designation of availability of maintenance services, sources of replacement materials.
- b. The Contractor warrants and represents that in making a formal request for substitution that:
- (1) The proposed substitution is equivalent to or superior in all respects to the product specified.
  - (2) The same warranties and guarantees will be provided for the substitute as for the product specified.
  - (3) The Contractor will coordinate the installation of accepted substitutes into the Work and will make such changes as may be required for the Work to be complete in all respects.
- c. If the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty that the proposed substitution or deviations will provide a quality or result at least equal to that attainable by the product specified, the Commissioner may reject substitution or deviation without further investigation.
- d. The Commissioner will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Commissioner will not approve proposed substitutes as equal to items specified which, in the Commissioner's opinion, would be unharmonious, or otherwise inconsistent with the character, quality or design of the Project.

- e. Any additional cost, or any loss or damage, arising from the substitution of any material or method for those specified must be borne by the Contractor, including the cost for damages incurred by other contractors notwithstanding approval or acceptance of such substitution by the Commissioner, unless such substitution was initiated at the written request or direction of the Commissioner.
- f. The investigation, review and approval of substitute materials requires a minimum of thirty (30) days beyond that required for specified routine items. The Contractor agrees that no request for a delay or disruption will be allowed whether or not the substitution is granted.
- g. Approval by the Commissioner of a substitution of material must be given pursuant to a Contract modification as required in Article X, "Changes in the Work."

F. Warranties.

1. Warranties.

- a. The Contractor warrants to the City that the Work, materials, and equipment furnished and installed under the Contract are of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.
- b. Without limiting the scope or duration of any Manufacturer's Warranty provided for specific parts of the Work, all Work furnished under this Contract must be warranted against defective materials and workmanship, improper performance and non-compliance with the Contract Documents for a period of time provided by law or the Manufacturer's Warranty. Warranties of manufacturers and installers, where required by Part Three of the Contract Documents, Detailed Specifications, shall be secured by the Contractor for the periods specified.
- c. Without limiting, and in addition to complying with, all warranties and guarantees contained herein, Contractor will, for a period of one year from the date of Final Completion of the Project, at its own expense and without any cost to the City, repair and replace all Work and/or defective parts that may be required or made necessary by reason of defective design, material or workmanship, or by reason of non-compliance with the Contract Documents. This will be known as the "Correction Period." The Correction Period will commence on the first day the individual item is placed in service by the City. The City may revoke acceptance if the materials, goods, or components are later discovered not to be in conformance with this Contract. Any Work, equipment, or materials which are repaired or replaced shall have the applicable Correction Period extended for one additional year from the date of the last repair or replacement.
- d. Nothing stated herein shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

2. Contractor's Warranties.

- a. The Contractor's Warranty must be in addition to any Manufacturers' Warranties.
- b. The Contractor's Warranty must include the name of the Project as designated in the Contract Documents, be signed by an officer of the company having authority to provide the warranty. This warranty incorporates all provisions of the Contract Documents that refer or relate to the guarantee. This warranty is commenced on (date)."
- c. Should the Contractor or any Subcontractor of any tier return to do any Work during the warranty period, the Contractor or any Subcontractor of any tier must procure and maintain the insurance coverages required in Section III by this Contract and provide certificates of insurance for the coverages to the Commissioner, prior to beginning the work.

3. Manufacturer's Warranties.

- a. The Contractor must:
  - (1) ensure that all required Manufacturer's Warranties pass through to the CDA.
  - (2) submit all applicable Manufacturer's Warranties to the Commissioner and ensure that all warranty forms have been completed in the CDA's name and registered with the appropriate manufacturers.

Repairs and replacements made by the Contractor, pursuant to Section VI.F.3, will include a Manufacturer's Warranty, if standard with the Manufacturer, in addition to the Contractor's Warranty.

G. Testing Laboratory Labels.

1. All equipment containing electrical wiring must conform to the City Electrical Code.
2. In compliance with City of Chicago Ordinances all items of equipment furnished and installed or assembled by the Contractor under this Contract will be approved and so labeled by a testing laboratory acceptable under the Chicago Electrical Code Section 14-64-010.
3. Any unit comprised of a number of components assembled at the factory and considered custom made will have a label of a testing laboratory acceptable under the Chicago Electrical Code Section 14-64-010 for the entire unit as well as for each component.
4. All costs in obtaining a Testing Laboratory Label will be paid for by the Contractor with no additional charge to the City.

Any delays in Completion of the Project caused by the manufacturer of equipment in obtaining the required Testing Laboratory Labels and City approval will not be grounds for an extension of time beyond the Substantial Completion Date.

H. Materials, Inspection and Responsibility.

Without limiting the city's rights of inspection under Article XIII or elsewhere in this Contract:

1. The Commissioner, by his or her representatives, shall have the right to inspect any equipment or materials to be used in carrying out this Contract.
2. The City does not assume any responsibility for the availability of any controlled materials or other materials and equipment required under this Contract.

3. The Contractor shall be responsible for all materials, components and completed Work furnished under this Contract until expiration of the Contractor's Warranty.
4. Materials, components or completed Work not complying herewith may be rejected by the Commissioner and must be replaced by the Contractor at no cost to the City.
5. Any materials or components rejected must be promptly removed from the project or project site at the sole expense of the Contractor following receipt of notice from the Commissioner that such materials or components have been rejected.

**END OF VI**



## **VII. PERSONNEL**

### **A. General.**

The Contractor must, immediately upon receiving a fully executed copy of the Contract, assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Work. Contractor must include among its staff such Key Personnel and positions as identified below.

### **B. Key Personnel.**

1. Upon award of the Contract, the Contractor will submit a project staff organizational chart, which includes the names and resumes of employees in key positions for this Project. All key personnel must have experience on projects of a like size and scope to this Project in the position they are proposed to fill. All employees in key positions must be approved by the Commissioner.
2. If any key personnel furnished by the Contractor for the Project in accordance with the key personnel provisions under this section of the Contract should be unable to continue in the performance of assigned duties for reasons due to death, disability or termination, the Contractor must promptly notify the Commissioner explaining the circumstances. Changes in assignment of key personnel due to commitments not related to this Contract are prohibited without Commissioner's approval.
3. On request by the Commissioner, the Contractor must furnish to the Commissioner within seven (7) working days the name of the person substituting for the individual unable to continue, together with any information the Commissioner may require to judge the experience and competence of the substitute person. Upon approval by the Commissioner, such substitute person must be assigned to the Project and if the Commissioner rejects the substitute, the Contractor shall have seven (7) days thereafter to submit a second substitute person. Such process shall be repeated until a proposed replacement has been approved by the Commissioner.
4. In the event that, in the opinion of the Commissioner, the performance of personnel of the Contractor assigned to this Project is at an unacceptable level, such personnel will cease to be assigned to this Project, must return to the Contractor, and the Contractor must furnish to the Commissioner the name of a substitute person or persons in accordance with the previous paragraph.

### **C. Character of Workers.**

The Contractor must employ only competent and efficient laborers, mechanics, or artisans and whenever, in the opinion of the Commissioner, any such worker is careless, incompetent, violates safety or security rules, obstructs the progress of the Work, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this Contract, the Contractor must, upon request of the Commissioner, discharge or otherwise remove such worker from the Work and must not use such worker again, except with the written consent of the Commissioner. The Contractor must not permit any person to enter any part of the Work or any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.

### **D. Supervision and Superintendence.**

1. The Contractor must personally supervise and superintend the Work, and will have a competent jobsite Superintendent, able to direct all of Contractor's and subcontractor's Work, at the site at all times that any Work is being performed.

2. The Contractor must also have a full time experienced and qualified Project Manager and Safety Representative assigned to the Project.
3. Job Superintendent and Project Manager or designee must be available by phone, 24 hours per day, 7 days per week, including holidays, throughout the Project duration.

**END OF VII**

## **VIII. SCHEDULE**

### **A. Time.**

1. **Duration:** The Contract duration for Substantial Completion is the period of time allotted in Part One of the Contract Documents for Substantial Completion. Contractor must achieve Substantial Completion of the Project by the Contract Completion Date.
2. **Start Date:** The date of commencement of the Work will be the date set forth in the Contract or such other date as may be established at the discretion of the Commissioner in the Notice to Proceed.
3. **Progress and Completion.**
  - a. **TIME IS OF THE ESSENCE IN THIS CONTRACT.**
  - b. No time extensions will be allowed unless they are contained in a Contract modification, which has been approved and executed by the City.
  - c. Without the Commissioner's prior written approval, the Contractor will not suspend any Work.
  - d. Notwithstanding any other terms contained herein, the Contractor will take measures to protect its Work and to minimize the impact of such conditions on the progress of the Work.
4. **Liquidated Damages.** Liquidated damages will be assessed against the Contractor, in accordance with the Schedule set forth in Part One of the Contract Documents, for: Substantial Completion of the Project after the Contract Completion Date, failure to achieve any milestone or phase dates that provide for liquidated damages as set out in Part One of the Contract, failure to return any area to aircraft operations on a timely basis as set out in Part One of the Contract Documents, or failure to complete the Punch List Work as required by Section VIII.D.2.
5. **Daily Progress Reports:** The Contractor and all Subcontractors must prepare and submit to the Commissioner daily progress reports on the various parts of the Work in the form that is approved by the Commissioner. The daily progress reports must include, but not be limited to, the number of workers and the classification of the trades involved, equipment used, and any pertinent information regarding possible delays in the Work. Daily progress reports must be submitted to the Construction Manager prior to the completion of the following work day.
6. **Weekly Project Progress Meeting:** The Contractor's project manager and field superintendent must attend a weekly project progress meeting with the Construction Manager. The Contractor's project manager must submit a three-week look-ahead schedule, from the current accepted Monthly Update Schedule at the meeting. The three-week look-ahead shall include the activities ID and identify whether the activity is part of that Monthly Update Schedule's Critical path. The three-week look-ahead shall be provided through Final Completion of the Project. Weekly Progress Meetings will begin at Notice to Proceed and shall continue through Final Completion.
7. **Float Time:** Total Float Time shown on the Baseline Schedule is not for exclusive use of benefit of the Contractor, but is an expiring resource available to the City or the Contractor to accommodate changes in the Work, however originated, or to mitigate the effects of events which may delay performance of all or part of the Work. Time extensions for Contract performance will be granted only to the extent that delays extend the Critical Path of the current Monthly Update Schedule beyond the Contract Milestone(s) or Completion dates. In order to obtain a time extension, the Critical Path delay must be beyond the control and without fault or negligence of the Contractor, any of its Subcontractors or

concurrent delays. In the event that Contractor created a delay impact on an already negative float path on the current Monthly Update Schedule, the Contractor will not receive any time extension unless and until the negative float is increased for the activity with the highest negative float on the current Monthly Update Schedule.

B. Delays:

1. No Damages for Delay.

If the Contractor is delayed in the commencement, prosecution or completion of the Work 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 Commissioner's designee, or by any cause beyond the Contractor's control, none of which are due to any fault, neglect, act or omission on Contractor's part, then the Contractor shall be entitled solely and exclusively to an extension of time only. Such extension of 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 Contractor on account of the aforesaid or any other causes of delay.

2. Notice of Delay.

In the event that Contractor's performance of its Work is delayed by causes beyond the reasonable control of the Contractor, the phase / milestone of the project, the Substantial Completion Date or the Contract Completion Date of the project may be extended by the City to reflect the extent of such delay. The Contractor must give the Construction Manager written notice within five (5) Calendar Days of the commencement of such delay. The written notice by the Contractor will comply with the requirements of VIII. B.6. Consideration of a time extension for events beyond the reasonable control of the Contractor will only be made if the delay directly impacts critical path activities based on the latest accepted Monthly Update Schedule.

3. Events of Delay.

Events considered to be beyond the reasonable control of the Contractor are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, freight embargoes, or Weather Days in Section VIII.B.4., provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes.

4. Weather Days.

- a. No additional time will be granted for weather days associated with this Contract. All work must be completed by the contract dates for each phase and milestone. However, weather events, which are exceptionally irregular, are excluded. Unless otherwise specified in Part I, Instruction and Execution Documents, Section 4 – Time of Completion, an exceptional weather event shall be defined as an event that prevents work on one (1) or more Critical Path activities within the Baseline Schedule for three (3) or more consecutive planned workdays. The fourth (4<sup>th</sup>) consecutive planned workday prevented from occurring by an exceptional irregular weather event shall be grounds for requesting a time extension in accordance with General Conditions Article VIII.B.4.b.
- b. For each Weather Day the Contractor encounters that prevents work on critical path activities on Work Days in the latest accepted Monthly Update Schedule, the Contractor must provide written notice to the Construction Manager within two work days. The notice to the Construction Manager will be entitled Notice of Weather Day

and must state: 1) the date the weather occurred; 2) the type of weather (including the NOAA weather data or equivalent); and 3) the critical path activity of the latest accepted Monthly Update Schedule that could not be worked on because of the weather.

- c. The Construction Manager will review each Request for each Weather Day as submitted by the Contractor. The Construction Manager will notify the Contractor of its decision in writing. If the CM denies the Weather Day Request, the Contractor may appeal the decision to the Commissioner within (10) days of receipt of the denial from the Construction Manager.
- d. The Commissioner will grant or deny the request for each Weather Day based upon the facts stated in the request and the actual weather conditions that day as they affected the Contractor's scheduled activities. The Commissioner will notify the Contractor of that final decision in writing. If the Commissioner denies the request, the Contractor will not be entitled to a Weather Day for the date requested.
- e. The Contractor's failure to follow the requirements of this Section VIII.B.4 constitutes a waiver of the right to file a dispute to the Chief Procurement Officer pursuant to Article XVII.
- f. If the Contractor does not agree with the Commissioner's final decision on a request for a Weather Day, the Contractor may appeal the decision to the Chief Procurement Officer under Section XVII.B of the Contract. However, the Contractor may not appeal the decision unless the Weather Day request exceeds three (3) Calendar Days or the liquidated damages exceed \$10,000. The decision of the Commissioner is final for each Weather Day request of three (3) days or less, or if the liquidated damages assessed are \$10,000 or less.

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 Contractor, including but not limited to the fault or negligence of the Contractor or its Subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of the Contract; or (3) which has not been requested in strict accordance with Article VIII.B.6. Procedure for Time Extension Requests the procedures and such other provisions of the Contract Documents which may be applicable. The Commissioner's permitting the Contractor 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.

6. Procedure for Time Extension Requests.

- a. The Contractor expressly consents to both the time requirements and notice content requirements for requesting an extension of time set forth in this Section VIII.B.6. The Contractor acknowledges that the notice requirements set forth in this section VIII.B.6 shall be strictly enforced and agrees that any failure on the part of the Contractor to provide notice strictly in accordance with the requirements of this Section VIII.B.6, shall constitute a waiver of the Contractor's right to seek an extension of time or to file a dispute to the Chief Procurement Officer under Article XVII. The Contractor further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section VIII.B.6 shall not be subject to or diminished by any claim on the part of the Contractor that the Commissioner or any person acting on behalf of the Commissioner 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 Contractor further acknowledges that the time requirements and content requirements of Section VIII.B.6 have the purpose, among others, of allowing the Construction Manager and Commissioner to evaluate the time

extension request contemporaneously with the event that has been claimed to cause the delay.

- b. In order to request a Time Extension, a "Commencement of Delay" notice must be provided in writing to the Construction Manager, no more than five (5) calendar days after the commencement of the delay, otherwise, the claim for the time extension is waived.
- c. "Termination of Delay" noticed must be provided in writing to the Construction Manager no more than five (5) Calendar Days after the delay has been terminated.
- d. If the cause of the delay impacts the critical path of the latest accepted Update Schedule, a "Request for Time Extension" must be submitted within ten (10) Calendar Days after the termination of the delay and must (1) state the cause of the delay, (2) specifically demonstrate the negative impact of the delay on the critical path of the latest accepted Update Schedule and (3) state the number of days requested.
- e. The Construction Manager shall advise the Contractor of its recommendation regarding the Time Extension request, in writing, within ten days of receipt. If the Contractor and Construction Manager agree on the length of a proposed Time Extension, the Contractor will sign a Contract Modification that states the agreed upon Time Extension for approval by the City to the Commissioner. The Contractor must make a Claim to the Commissioner, as required by Article XVII, regarding any Request for Time Extension request to which the Construction Manager and Contractor do not agree. However, the Contractor may not appeal the Commissioner's final decision unless the Request for Time Extension exceeds five (5) Calendar Days or the liquidated damages exceed \$10,000. The decision of the Commissioner is final for each Request for Time Extension of five (5) days or less, or if the liquidated damages assessed are \$10,000 or less.

7. Liquidated Damages for Delay

- a. As provided in Section VIII.A.4., if the Project is delayed as a result of the Contractor's refusal or failure to begin the Work on the date of commencement as stated in Section VIII.A.2 or as a result of Contractor's refusal or failure to carry the Work forward expeditiously with adequate forces, equipment, material or other resources, or as a result of Contractor's other failure to complete the Work according to the approved Baseline Schedule, and if Part One provides for liquidated damages then such damages, shall be assessed. Liquidated damages will be assessed for any of the following events, if so provided in Part One: (i) every day the Substantial Completion Date is exceeded, (ii) every day that a phase or milestone date (that provides for liquidated damages) is exceeded, (iii) every day for failure to complete Punch List Work as required by Section VIII.D.2, or (iv) for failure to return an area of the Project for aircraft operations within the time as may be required by Part One. In such events, the City will recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due the Contractor, and if said moneys are insufficient to cover said damages, then the Contractor will pay the amount due.
- b. These liquidated damages are for Contractor's delay only, and nothing contained in this Contract limits the right of the City to recover from the Contractor any damages, costs and expenses sustained by the City due to Contractor's other improper performance hereunder, repudiation of the Contract by the Contractor, Contractor's other failure to perform, or Contractor's other breaches in any other respect, including but not limited to defective workmanship or materials.

C. Substantial Completion of Milestones, Phases, and Project.

The Contractor will notify the Construction Manager and Commissioner, in writing, of a definitive date when the Work on a milestone, a phase or the Project as a whole will be ready for

inspection to determine whether the Work is Substantially Complete. Notice will be given by the Contractor at least seven (7) days in advance of that date for a milestone or phase and fifteen (15) days in advance for the Project as a whole. If the Construction Manager concurs that the work will be ready for inspection and/or testing on the date stated, the Commissioner, Construction Manager 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 Contractor of its responsibilities under the Contract Documents. The Contractor is required to furnish access to all parts of the subject Work for the inspection.

D. Completion of Punch List.

1. It is also understood and agreed that TIME IS OF THE ESSENCE IN CLOSING OUT THE JOB SITE WORK OF THIS CONTRACT for a milestone, phase or Project completion. The Contractor agrees to begin work immediately after receipt of a Punch List.
2. The period to complete Punch List Work for a milestone or phase will be determined in the sole discretion of the Commissioner. The period to complete the Punch List Work for the Final Project Completion is forty-five (45) calendar days unless otherwise stated in Part One of the Contract Documents. The time period for completion of the Punch List Work begins the day after the Punch List is provided to the Contractor. The Commissioner may extend the period to complete Punch List Work for specific work, which requires the receipt of long lead-time materials. However, all other Punch List Work must be completed as required by Section VIII.D, including the turnover of Record Documents, As-Built Drawings and O&M Manuals and all other documents required by the contract documents.
  - a. Unless otherwise directed by the Commissioner and Chief Procurement Officer, failure of the Contractor or its Subcontractors to begin the Punch List Work on the job site prior to the expiration of three (3) Working Days after receipt of the Punch List will be construed as failure to prosecute the work of the Contract.
  - b. It is further understood and agreed that the Punch List Work will be continuously prosecuted once begun. Therefore, any gap of three (3) Working 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.
  - c. The Contractor will notify the Construction Manager, in writing, of a definitive date when the Punch List Work will be ready for inspection. The Construction Manager and other required parties will make the inspection within a reasonable time frame. If the Punch List Work is deemed complete, the Construction Manager will issue a letter to the Contractor stating that the Project has reached Final Completion.
  - d. Unless otherwise agreed in a Contract Modification, the failure to commence, continue, or complete the Punch List Work will result in the charging of \$500 per day of liquidated damages.
  - e. If liquidated damages are assessed, they will be added to the previously determined liquidated damages assessed at the time of Substantial Completion of the Project.

E. Baseline and Monthly Update Schedules.

1. General.
  - a. It is understood and agreed that "TIME IS OF THE ESSENCE OF THE CONTRACT". The Contractor agrees to begin actual work covered by this Contract in conformity with the Contract provisions and to prosecute the same with all due diligence, so as to Substantially Complete the entire Work under this Contract by the Contract Completion Date, expressed in Calendar Days following Notice to Proceed as set forth in Part One. The Contractor will, when necessary, use overtime, multiple shifts,

weekend and or holiday work to maintain the Baseline Schedule, approved by the Commissioner, without additional compensation.

- b. The Contractor must use the Critical Path Method (CPM) as described in Paragraph 3 below in preparing the Baseline and Monthly Update Schedule for approval by the Commissioner. The Contractor must utilize Primavera Project Planner 6.0, or a more current version. The Commissioner may choose to direct the Contractor to use a different scheduling software program to prepare the schedule. The Commissioner's decision regarding the scheduling software is final and cannot be disputed under XVII of the Contract. Any costs associated with obtaining the required scheduling software or training to use such software will be incidental to the Contract.
- c. The Baseline Schedule will, at a minimum, indicate the dates for the starting and completion of the various stages of the Work, including without limitation the placing of material orders, delivery of materials and equipment; preparation, submittal and approval of all required compliance submittal; preparation and procurement of material and equipment furnished by the Contractor; interface activities performed by others upon which the Contractor's Schedule depends; all work activities and field construction operations; equipment installation, testing and balancing.
- d. The Commissioner's approval of the Baseline Schedule is done for the sole purpose of ensuring that all CPM scheduling documents prepared by the Contractor are in conformance with the Contract requirements. This approval does not relieve the Contractor of the responsibility for the means, methods, procedures, manpower requirements and equipment to meet Activity durations, and sequence of the construction process nor does it provide any entitlement to additional funds for Project Substantial Completion on a date that is earlier than the Contract Completion Date.
- e. The initial approved Baseline Schedule will only be changed based on a Contract Modification which extends the Contract Completion Date or the required date for completion of a phase or milestone. All updates will be plotted against the approved Baseline Schedule

2. Qualification and Approval of Scheduler.

- a. To assist in the preparation and maintenance of the Baseline and Monthly Update Schedule, the Contractor may engage, at its own expense, a consultant who is skilled in the application of CPM scheduling techniques for construction projects and the use of Primavera scheduling software. If the Contractor has qualified personnel on staff, the Contractor may perform the required scheduling with its own organization.
- b. Prior to engaging a consultant, or using in-house staff personnel and within five (5) Calendar Days after award of Contract, the Contractor must submit to the Construction Manager:
  - (1) The name and address of the proposed consultant or in-house staff person.
  - (2) Sufficient information to show that the proposed consultant, or the in-house staff person, has the qualifications and experience to meet the progress schedule requirements.
  - (3) A list of prior construction projects, along with Primavera schedule samples from three (3) different projects, which the proposed consultant or in-house staff person has prepared. These three (3) CPM schedules must be for projects similar in complexity and magnitude to this Project.
- c. The Commissioner has the right to approve or disapprove employment of the proposed consultant, or the performance of the schedule requirements of the Contract by the Contractor's in-house staff, and will notify the Contractor as to approval or



disapproval within seven (7) Calendar Days from receipt of the information. In case of disapproval, the Contractor will submit another person and the supporting documents within seven (7) Calendar Days. The Commissioner also reserves the right to disqualify the consultant or Contractors staff personnel at any time throughout the Project if the preparation, presentation, reporting and updating do not, in the Commissioner's opinion, meet the degree of detail described in the Project specification. The Commissioner's disapproval or disqualification of the consultant or in-house staff is final and cannot be disputed under Article XVII of the Contract. Such approval, disapproval or disqualification does not release the Contractor from any of its obligations under this Contract.

3. Critical Path Method.

- a. The Contractor must prepare a detailed Baseline and Monthly Update Schedule for the Work consisting of a CPM diagram or diagrams, as specified below. The format of the network diagram will utilize the "Gantt Chart" method with the relationship lines, showing the proposed starting and completion date for the various stages of the Project including any float time, and will be prepared so that it can be used to plot actual progress against proposed progress. The Baseline Schedule must have the same durations for phases, milestones, and Contract Completion Date as stated in Part One of the Contract Documents. The Baseline Schedule must be updated and submitted no less than monthly or more frequently as directed by the Commissioner or the monthly payment will be withheld pursuant to General Conditions Section IX.F.3 of the Contract.
- b. Specification applicable to Baseline Schedule and network diagram:
  - (1) Each separate sheet will include the Project name, Contract number, Contractor's name, data date and plot date. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included therein. The Contractor will be given a "Schedule Template" which will identify the general layout and all required elements.
  - (2) The Baseline Schedule must show the order and interdependency of activities, indicating the sequence in which the Work is to be performed as planned by the Contractor and must describe and indicate the critical path.
  - (3) The Baseline Schedule must be submitted to the Commissioner in triplicate printed in color on 11"x17" paper. Additionally, a CD containing the following files must be submitted: Narrative, Baseline Schedule ("xer" format), Schedule Analyzer Report and a full schedule ("pdf" format).
  - (4) Activities shown on the Baseline Schedule will include, as a minimum, field construction operations, submittal to and approval of submittals by the Commissioner, procurement of material and equipment furnished by the Contractor or City, interface milestones performed by others upon which the Contractor's Baseline Schedule may depend, and equipment installation and testing. The duration for approval submittals shall be fourteen (14) calendar days for shop drawings, product data and samples and thirty (30) calendar days for requested substitutions. Exceptions to the review duration will be evaluated by the Construction Manager on a case by case basis. If a submittal is rejected or returned for correction, two new activities will be inserted into the schedule for Resubmission and another for Review of the Resubmission.
  - (5) The Contractor shall obtain a unique identifier from the CM prior to coding the schedule and use Primavera's "Project Activity Codes" for all codes defined in Section VIII.E.3.d.

- (6) The critical activities defined as activities with less than one (1) day of float will not exceed twenty (20) percent of the number of activities within each phase of work. The critical and near critical activities with less than ten (10) days of float will not exceed forty (40) percent of the number of activities within each phase of work.
- c. The following items define the term "activities" as it pertains to the Project CPM Schedule:
- (1) Each activity will be a unit of work, with an amount of time indicated for its performance.
  - (2) Each activity will be a logically separate part of the work, defined by an observable start and an observable finish. All activity relationships and the types of constraints must be accepted by the Construction Manager. Use of the following constraints is not permitted: Finish On, Start On, Mandatory Finish, Mandatory Start.
  - (3) To establish the scope of an activity for CPM purposes, the Contractor will form a single activity from the largest grouping of related operations, which permit a continuous and measurable flow of work.
  - (4) The scope of an activity will be concise enough to permit a reasonable appraisal of its status or as directed by the Construction Manager. Activities should be broken down in the level of detail as directed by the Construction Manager.
  - (5) Activities of other stakeholders or companies related to the project will be included in the Contractor's schedule as milestones and identified with a designation accepted by the Construction Manager.
- d. The following information must be furnished for each activity in the Baseline Schedule:
- (1) Activity ID.
  - (2) Description of the activity.
  - (3) Duration of the activity.
  - (4) Activity Resource References: each activity will include, but not be limited to: a) units of measure (e.g., SF, SY, TNS, LF, CY, LBS., EA.), budgeted quantity, and budgeted cost per unit or as detailed in the Schedule of Prices found in Part One, Section 3 of the Contract Documents. For the Baseline Schedule each line item from the Schedule of Prices must be included as its own resource in the resource dictionary and the sum of the resource loaded activities and general condition activities (e.g., mobilization, project management, bonds and insurance) must equal the amount bid. In addition, when directed by the Commissioner, the manpower requirements by subcontractor craft, man-hours, and equipment and items listed on the approved Schedule of Values must be provided.
  - (5) Each activity that is not performed by the Contractor will be assigned a responsibility code (using activity code "RESP") indicating which Subcontractor, supplier, fabricator, etc., is to perform the activity. Submittal review activities should be coded as "A/E" and Utility projects should be coded to the responsible utility.
  - (6) When applicable, each activity must be coded according to the phase (using activity code "PHAS") in which the activity is to be performed. Phase coding must be in accordance with the contract phasing specified in Part I of the

Contract Documents. Activities relating to the overall project or otherwise not specific to any particular phase must be coded "General".

- (7) When applicable, each activity must be coded according to the type of work (using activity code "TYPE") being performed. Type coding includes, but is not limited to, submittal and approval of submittals, procurement, fabrication construction / installation, and testing/commissioning. Activities relating to the overall Project, or otherwise not specific to any particular work type, must be coded "General".
  - (8) When applicable, each activity must be coded according to the location of the work (using activity code "LOCN") in which the activity is to be performed. Location coding includes, but is not limited to, terminal, concourses, gates, airside, landside, etc. Activities relating to the overall project, or otherwise not specific to any particular location, must be coded "General".
  - (9) When applicable, each activity must be coded according to the milestone (using activity code "MILE") in which the activity is to be performed. Milestone coding must be in accordance with the contract phasing specified in Part I of the Contract documents. Activities relating to the overall project, or otherwise not specific to any particular milestone, must be coded "General".
  - (10) When applicable, each activity must be coded according to the associated specification section (using activity code "SPEC"). Specification coding must accurately follow the Contract Documents and/or be in accordance with CSI standards, as required by the Commissioner.
  - (11) Additional activity code as may be required by the Commissioner.
  - (12) Each activity will be identified with early/late start, early/late finish, and total float.
  - (13) When applicable, each activity must be coded according to the associated Field Order number (using activity code "FO"). In addition, the Field Order must be identified within each activity description.
- e. In addition to the above, any phase, milestone, or activity with a start date/finish date or duration specified in Part One will be shown in the Project CPM Schedule. Phase, milestone, and Project Substantial Completion dates must have late finish constraints based upon the durations specified in Part One.

4. Completion Requirements.

- a. The Contractor must submit the required Baseline Schedule in two (2) stages:
  - 1) Stage 1 – must be submitted within fifteen (15) Calendar Days after the "Notice of Award" is issued. This schedule must detail the first ninety (90) days, then summarize the remaining activities through project completion and identify the critical path.
  - 2) Stage 2 – must be submitted within forty-five (45) Calendar Days after the "Notice of Award" is issued. This schedule must detail all activities through project completion with cost and resource loading.
- b. Failure by the Contractor to provide the Baseline Schedule, both Stage 1 and Stage 2, within the required time period is grounds for the Commissioner to withhold monthly progress payments.
- c. The Contractor will not be allowed to begin field work until the Stage 1 Baseline Schedule is approved by the Commissioner.

- d. Contractor's failure to have the Baseline Schedule approved because the schedule did not comply with the requirements of Section VIII.E. is not a basis for a Request for Time Extension.

5. Submittal, Acceptance, and Contractor's Responsibility for the Baseline Schedule.

- a. The Contractor shall submit a written narrative and a Schedule Analyzer Enterprise report in triplicate and text file with the submission of the Baseline Schedule. The narrative shall present the construction approaches and explain the schedule logic, and discuss the project's critical path.
- b. Prior to submitting the Baseline Schedule to the Construction Manager, the Contractor must review and verify the procurement lead time for the fabrication and delivery of all construction materials and Project equipment along with the erection and/or installation durations for all the construction activities that make up the critical path of the Project.
- c. The Contractor must coordinate its letting of subcontracts, material purchases, shop drawing submissions, delivery of material and sequence of operations to conform to the Baseline Schedule and will furnish proof of same as may be required by written notification from the Construction Manager.
- d. Upon receipt of the Baseline Schedule and supporting documents, the Construction Manager will review the schedule for conformance with the Contract Documents and degree of detail and within fourteen (14) calendar days, will either approve the schedule or reject it with written comments. If the Baseline Schedule is approved, it will become the "Baseline Schedule" for the project. If the Baseline Schedule is rejected, the Contractor must submit a Revised Baseline Schedule to the Construction Manager within seven (7) Calendar Days after the first rejection. All subsequent rejections require a revised Baseline Schedule to be submitted within three (3) Calendar Days after the rejection.
- e. In the event the Contractor fails to provide the required Baseline Schedule and supporting documents as outlined in this section within the time prescribed and/or updates within the stated time frames, the Contractor will be in default of the Contract requirements, and the Commissioner may, in addition to any other remedies available to the City, withhold monthly progress payments until such time as the Contractor submits the required information.

6. Monthly Update Schedule.

- a. The Contractor shall prepare the first Monthly Update Schedule by updating the accepted Baseline Schedule. The subsequent Monthly Update Schedules shall use the previous accepted Monthly Update Schedule as a basis for the current Monthly Update Schedule. All Monthly Update Schedules shall be targeted against the accepted Baseline Schedule for the purpose of comparison. The Contractor will be given a "Schedule Template" which will identify the general layout and all required elements.
- b. When preparing the first Monthly Update Schedule, the Contractor must not make any changes, additions, or deletions to the accepted Baseline Schedule dates, durations, relationships, constraints, resources, codes, or costs, unless the changes have been requested in writing and accepted by the Commissioner. When preparing subsequent Monthly Update Schedules, using the previous Monthly Update as a basis, the Contractor must not make any changes, additions, or deletions to the accepted Baseline Schedule dates, durations, relationships, constraints, resources, codes, or costs, unless the changes have been requested in writing and accepted by the

Commissioner. The Monthly Update Schedule will be compared against the accepted Baseline Schedule.

- c. The Contractor must update the Monthly Update Schedule on a monthly basis coincident with the submission of the monthly pay estimate or more frequently if requested by the Commissioner at no additional cost. If payments are being made twice a month pursuant to Section IX.C.1, the Commissioner will determine whether the updated schedule information must be submitted with each pay estimate. The updated information will include the original schedule detail and the following additional information:
  - (1) Actual start dates
  - (2) Actual finish dates
  - (3) Activity percent completion
  - (4) Remaining duration of activities in progress
  - (5) Critical activities will be identified or highlighted
- d. The Monthly Schedule must be submitted to the Commissioner in triplicate printed in color on 11" x 17" paper in a format provided by the Construction Manager. Additionally, a CD containing the following files must be submitted: Narrative, Monthly Update Schedule ("xer" format), Baseline Schedule ("xer" format), Schedule Analyzer Report and a full schedule ("pdf" format). The Monthly Update Schedule must be submitted no later than three (3) work days after the data date. The data date will match the monthly NTP anniversary date or on a date as directed by the Construction Manager.
- e. Upon receipt of the Monthly Update Schedule, the Construction Manager will review the schedule for conformance with the Contract Documents and degree of detail. The Commissioner, within fourteen (14) Calendar Days after Construction Managers receipt of the updated Monthly Update Schedule and supporting documents, will approve the updated Monthly Update Schedule or reject it with written comments. If the updated Monthly Update Schedule is rejected, the Contractor must submit a revised updated Monthly Update Schedule within three (3) calendar days after the first rejection. All subsequent rejections require a revised Monthly Update Schedule to be submitted within three (3) calendar days after rejection.
- f. Progress payments will be withheld, by the Commissioner, if updates are not submitted by the Contractor as required.
- g. As part of the normal Monthly Schedule update, the Contractor must prepare a written narrative report, highlighting the progress during the past update period. The written narrative report will include but not be limited to the following information:
  - (1) Summary of Work accomplished during the past update period
  - (2) Comparison chart of the approved Baseline Schedule contract completion dates and the current update contract completion dates
  - (3) Analysis of critical path(s)
  - (4) Analysis of time lost/gained during the update period
  - (5) Identification of problem areas
  - (6) Recommended solutions to current problems
  - (7) Explanation of current changes to the schedule.
- h. The Contractor shall submit a narrative and a computerized schedule analysis report in triplicate with the submission of the Project CPM Schedule. The narrative shall compare previous months update with the current months update. The computerized schedule analysis report must be generated by using software acceptable by the Construction Manager and submitted as a hard copy and text file.

- i. The Contractor is required to attend a Monthly Update Schedule meeting with the Construction Manager. The purpose of this meeting is to review progress, current status, problem areas, planned work and the accuracy of the Monthly Update Schedule. The Contractor's narrative report will be reviewed at this meeting. The Contractor's representatives attending this meeting must include the accepted scheduler and key personnel that have the authority to commit manpower and/or other resources to correct any negative impact to the schedule. The Contractor shall provide any necessary computer and/or audio/visual equipment (such as a projector) to conduct this meeting.
  - j. The Monthly Update 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 as-built status. All remaining activities must accurately and logically reflect how the contractor plans on achieving the contractual dates set forth in Part One or as defined by accepted field orders. Any out of sequence logic must be corrected and re-planned. Any current changes from the current accepted Monthly Update Schedule must be requested and explained in the update Narrative.
  - k. None of the information provided in this Section VIII.E.6 constitutes a Request for a Time Extension under the General Conditions Section VIII.B.6.
7. Contractor Proposed Changes to the Monthly Update Schedule.
- a. If the Contractor proposes to make any changes in the approved Monthly Update Schedule, the changes must be addressed within the Narrative, stating the reasons for the change, identifying each changed activity (including durations and interrelationships between activities) and providing a compact disk of the proposed changed schedule.
  - b. The Commissioner has the authority, in his or her sole discretion, to approve or disapprove the proposed change in the Monthly Update Schedule and will do so in writing as part of the Monthly Update Schedule review. The Commissioner's decision is final and may not be disputed by the Contractor under Article XVII of the Contract.
  - c. Proposed changes that require changing the Primavera finish constraints originally established by the contract documents can only be accepted by approved Contract Modification.
8. Recovery.
- a. The Contractor must maintain an adequate work force and the necessary materials, supplies and equipment to meet the most recently accepted Baseline Schedule. In the event that the Contractor, in the judgment of the Commissioner, is failing to meet the Baseline Schedule, including any Contract milestones, the Commissioner will direct the Contractor in writing that a Recovery Schedule must be submitted to the Construction Manager. The Contractor must submit the Recovery Schedule within ten (10) Calendar Days of receipt of the Construction Manager's written direction.
- The Commissioner's decision to order a Recovery Schedule is final and may not be disputed. The Commissioner's rights under this provision are cumulative to rights under any other provisions of the Contract.
- b. The Recovery Schedule must set forth a plan to eliminate the accepted Monthly Update Schedule slippage (negative float). 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. All costs associated with implementing the Recovery Schedule will be borne by the Contractor.

- c. Upon receipt of the Recovery Schedule, the Construction Manager will review the Recovery Schedule for conformance with the Contract Documents and degree of detail and make a recommendation to the Commissioner. The Commissioner within fourteen (14) calendar days after receipt of the Recovery Schedule and supporting documents by the Construction Manager will either approve the Recovery Schedule or reject it with written comments. If the proposed Recovery Schedule is rejected, the Contractor must submit a revised Recovery Schedule within seven (7) Calendar Days after the date of rejection. All subsequent rejections required a revised Recovery Update Schedule to be submitted within three (3) Calendar Days after the rejection. The Commissioner's decision to reject the Recovery Schedule or a revised Recovery Schedule is final and may not be disputed by the Contractor under Article XVII. Progress payments may be withheld by the Commissioner if the Recovery Schedule is not submitted by the Contractor as required.
  - d. Upon approval of the Recovery Schedule, it will become the Revised Baseline Schedule. All future Monthly Update Schedules will be plotted against the Revised Baseline Schedule.
  - e. The Contractor must implement the Recovery Schedule immediately upon approval of the Recovery Schedule by the Commissioner. In the event the Contractor refuses to follow the direction of the Commissioner, the Commissioner reserves the right after seven (7) days written notice to the Contractor, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it in accordance with the Recovery Schedule and charge the cost to the Contractor. The Commissioner's rights under this provision are cumulative to rights under any other provisions of the Contract including the City's rights to terminate for default or convenience.
9. Revised Baseline or Monthly Update Schedules.
- a. The Commissioner, through the Construction Manager, may direct the Contractor to revise the Baseline or the Monthly Update Schedule. The reasons for the direction may include but are not limited to: changes in the Work, re-phasing, the addition or deletion of scope, and acceleration.
  - b. The Construction Manager will direct the Contractor in writing to provide a revised Baseline or the Monthly Update Schedule. Resources and data related to those resources such as unit cost, cost, quantity, unit of measure, and resource ID must match the latest Pay Estimate. Resources and resource related data such as equipment hours, crew size, manhours, etc. will be evaluated and replanned by the Contractor to ensure the accuracy of the revised baseline schedule.
  - c. The Contractor must provide the Revised Schedule within ten (10) days of receipt of the Construction Manager's written direction.
  - d. The Commissioner has the authority, in his or her sole discretion, to approve or reject the Revised Schedule and will do so in writing within ten (10) days after receipt of the Contractor's submission; provided, however, that any change in the Baseline or Monthly Update Schedule that changes the Contract Completion Date or any date established in Part One for completion of a phase or milestone will require a Contract Modification. If the revised Baseline Schedule is rejected, the Contractor must submit the schedule to the Construction Manager within seven (7) calendar days after the first rejection. All subsequent rejections require the schedule to be submitted within three (3) calendar days after the rejection. If the Commissioner approves the Revised Schedule, then that Revised Schedule will be designated the new "Baseline Schedule". All monthly updates will be plotted against the new "Baseline Schedule" In Primavera. The Commissioner's decision to reject the Revised Schedule is final and may not be disputed by the Contractor under Article XVII.

F. Acceptance of the Work and Right to Occupy Before Substantial Completion.

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

G. Suspension of Work.

1. The Commissioner has authority to suspend the Work wholly, or in part for such period of time as the Commissioner may deem necessary due to conditions unfavorable for the satisfactory prosecution of the Work, or to conditions which, in the Commissioner's opinion, warrant such actions or for such time as is necessary to carry out orders given; or to perform any or all provisions of the Contract. If the Commissioner suspends the work for more than seven (7) Calendar Days, the Contractor will be entitled to compensation for the following costs of the suspension unless the suspension and/or costs were caused by any act or omission of the Contractor: demobilization and remobilization, field supervision (based upon the approved staffing plan), and idle equipment costs as provided in Article X.
2. If it becomes necessary to stop Work for an indefinite period of time, the Contractor must store all materials in such manner that they will not become damaged in any way, take every precaution to prevent damage or deterioration of the Work performed and erect temporary structures where necessary. The Contractor must not suspend work without written consent from the Commissioner.

H. Winter Suspension.

1. When the Contract Documents provides for a winter suspension, the Contractor must incorporate the winter suspension period into the Monthly Update Schedule. The winter suspension will begin and end on the dates specified in Part One of the Contract, if any.
2. The Contractor must prepare for the winter suspension period by removing or relocating any equipment, materials, stockpiles, or items, which may interfere with or impair Airport Operations. The Contractor must participate in a site inspection with the Commissioner on or before the winter suspension commencement date. Any grading, backfilling, barricades, or other items or work directed by the Construction Manager, will be completed without interfering or impairing Airport Operation, and must be finished before the commencement date of the winter suspension period. All costs associated with preparation of the project for the winter suspension period are incidental to the Project and must be included in the Contractor's Base Bid.



I. Work During the Winter Suspension Period.

1. If the Contractor requests permission to work during the specified winter suspension period and the request is approved, then the following rules will apply:
  - a. The Contractor will identify the proposed work within the most currently accepted Monthly Update Schedule by placing the work on a calendar that identified the proposed winter work days. The Monthly Update Schedule containing the proposed winter work must be submitted at least one (1) month prior to the commencement date of the winter suspension. If the proposed winter work is accepted, the Contractor will continue to update the Monthly Update Schedule as stated in paragraph E.6.c.
  - b. It is understood that no extension of time, regardless of the cause, or damages of whatever character, will be allowed for any work that may be delayed, hampered, disrupted, re-sequenced, changed, or stopped by the Commissioner or adverse weather during the winter suspension period.
  - c. All work will be coordinated with Airport Operations through the Construction Manager. Airport Operations cannot be interfered with or impaired in any way by the work being completed by the Contractor during the winter suspension. The Contractor will immediately remove and/or relocate any equipment, material, items, barricades, or stop work, if directed by the Commissioner.
  - d. Payment for work completed, inspected, and accepted during the winter suspension period will be in accordance with the procedures established in Article IX Payments.
  - e. It is understood that any increase in costs associated with the work done during the winter suspension period are the Contractor's responsibility and the Contractor is not entitled to any additional compensation. Such costs include but are not limited to, loss of productivity, winter heat, winter protection, snow removal, frost protection, disruptions to the work, work stoppages, temporary power, de-watering, winterized material (including but not limited to concrete, water, aggregate and bituminous mixtures.)
  - f. Substantial Completion dates for: Contract milestones, phase(s) (or sub-Phase(s) or the Project as a whole in the current approved Monthly Update Schedule will not be altered, changed, or adjusted in any way based upon the Work accomplished during the winter suspension period.
  - g. Any float for individual activities in the Baseline or Monthly Update Schedule that the Contractor gains, by doing Work during the winter suspension, must be used by the Contractor before it seeks a time extension.
  - h. All provisions of the Contract Documents apply to the Work being completed during the winter suspension.

**END OF VIII**

## **IX. PAYMENTS**

### **A. General.**

The Contract Price is the amount of the bid accepted by the City ("Contract Price"). The Contract Price includes all costs of any kind to complete the Project, including but not limited to, labor, equipment, materials, permits, licenses and taxes necessary to perform the Work in accordance with the Contract's written terms and conditions. To the extent that the Contract was bid by line items with unit prices and estimated quantities, the City will pay Contractor unit prices for actual quantities used. Lump sum bids and lump sum line items will be paid in accordance with Section IX.B. In all cases, any work contained in the Contract Documents for which no pay item is identified will be incidental to the Contract.

The City may opt to include allowances for certain work in the contract. Any allowances will be defined in the Contract Documents. Unless otherwise noted the value of the allowance shall be included in the Contractor's bid to arrive at the contract price. Allowances will be paid for in accordance with the terms outlined in the allowance description and Article X. Changes in the Work.

### **B. Contract Price Breakdown (Lump Sum Contracts and Lump Sum Line Item(s) of Unit Price Contracts).**

1. To verify the progress of the Work and to facilitate processing monthly Pay Estimates to the Contractor on lump sum Contracts or lump sum line items, the Contractor must submit to the Construction Manager for review, within fifteen (15) calendar days after Contract Award Date, a complete detailed and itemized breakdown of the various parts of the Project that are to be paid for on a lump sum basis including combined values and quantities of material, labor and other separate costs of all items ("Breakdown"). The total of these costs must equal the total lump sum of the Contract or lump sum line item(s) as applicable. Each Breakdown must correspond to cost-loaded Baseline Schedule activities. Each Breakdown must be divided in such a manner that payments for the various parts of the Work may be reviewed by the Commissioner and verified against the Contractor's completed Work.
2. Each Breakdown will be in such form and in such detail and supported as to correctness by such data as the Commissioner may require. The Breakdown(s) will be used as a basis for Contractor's certificate for Payment Estimates.
3. If the Contractor does not furnish a Breakdown as required by the City, the Commissioner may at his/her discretion, withhold payment until an acceptable Breakdown has been provided and approved.

### **C. Procedure for Monthly Payment Estimate and Final Payment.**

1. Provided that the Contractor proceeds to perform and complete the Work properly under the Contract, progress payments based on Pay Estimates, prepared by the Construction Manager, will be processed on a monthly basis. The payment period ends on the monthly anniversary date of the Notice to Proceed. Payments may be processed twice a month if the following conditions apply:
  - a. Any project valued at \$20,000,000 or less when the amount earned is greater than one million dollars (\$1,000,000).
  - b. Any project valued at \$20,000,000 or greater when the amount earned is greater than five million dollars (\$5,000,000).
2. Contractor must provide an original and two (2) copies of the following submittals to the Construction Manager as a condition precedent to the Commissioner submitting a Pay Estimate to the Comptroller for processing:

- a. **Certified Statement:** The Contractor must submit a certified statement (signed by the Contractor and notarized) with each Payment Estimate. The statement, in the form designated by the Commissioner, must list the amount earned by each Subcontractor, supplier and the Contractor during the Pay Estimate period and include the following:
- (1) the name and business address of the particular Subcontractor or supplier;
  - (2) description of the Work performed and/or product supplied;
  - (3) indication that the Subcontractor or supplier is an MBE, WBE, or a non-certified firm;
  - (4) the total amount of the particular subcontract;
  - (5) the amount previously paid to the Subcontractor;
  - (6) the amount of the Pay Estimate Contractor will pay to each individual Subcontractor and/or supplier from payments Contractor receives on the request;
  - (7) the balance remaining under the subcontract to complete the Work.
- b. **Partial Waivers of Lien to Date and Contractor's Affidavit Form:** The Contractor must submit the Partial Waivers of Lien to Date and Contractor's Affidavit, in the form designated by the Commissioner, from all Subcontractors and suppliers indicating the total payment requested by each and for which payment has been previously received by them from funds paid to the Contractor by the City pursuant to prior Pay Estimates. The Contractor's Affidavit must be clearly identified with Pay Estimate number and period covered. The affidavit portion of the form must include the total amount invoiced by the Subcontractor and supplier to date. In the event that, after submitting a current Payment Estimate but before payment therefore by the City is received, the Contractor receives payment for a prior Pay Estimate, the Contractor shall secure appropriate waivers of lien from all Subcontractors and Suppliers whose total payment to date is affected thereby. Such waivers shall be updated to reflect receipt of said additional payment and Contractor shall tender such waivers to the City on or before the date payment of the current Pay Estimate is made.
- c. **MBE/WBE Utilization Report:** A status report of MBE/WBE subcontractor payments, as required by Part One of the Contract, 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 C2 system required by the Office of Compliance (OCX).
- d. **Certified Payrolls:** Certified payrolls for the payment period must be submitted by the Contractor and all the Subcontractors working on the job site to the Construction Manager every week. Additionally, any Apprentice payroll certifications must be submitted with the Certified Payroll. All the payrolls must be identified with Contractor's or Subcontractor's NAME, PROJECT DESCRIPTION AND PROJECT NUMBER, and be sequentially numbered. The payroll must be submitted by the Contractor and Subcontractors until all Work by that Contractor or Subcontractor is completed. If there are periods of no Work by a Contractor or Subcontractor, a payroll labeled "NO WORK" must be submitted. The final payroll must be clearly labeled "FINAL". Certified payrolls are required to ensure, among other things, EEO compliance, Chicago Residency compliance, Section 2-92-330 of the Chicago Municipal Code and compliance with the prevailing wage rate requirements of this Contract, Race, Work classification, and gender should be clearly marked for each employee on the certified payroll along with all additional information required by the Chief Procurement Officer. An employee's address should appear every time his or her name appears on the payroll. Contractor may be required to submit data electronically or online in accordance with the City's LCP Tracker System.

- e. The Contractor must submit to the Construction Manager, with each Pay Estimate, Payroll Canvass Reports (PCR's) on Exhibits B and C included in Part One of the Contract Documents. The Contractor must submit the PCR's to indicate its compliance with both the Contract's "Award Criteria Determination" commitments made for each trade in Part One and Chicago Residency Ordinance requirements set forth in Section XIX.S. of the General Conditions. A "Pay Period Canvass Report" must be prepared individually, by the Contractor and by each of its Subcontractors, on Exhibit B to indicate, on a weekly basis, hours of each trade utilized during each pay period by the Contractor and its Subcontractors on the project. A combined "Payroll Canvass Summary Report" will be prepared by the Contractor on Exhibit C to indicate accumulated hours of each trade utilized, to date, on the Project by the Contractor and all of its Subcontractors. The Contractor is responsible for the accuracy of information and all arithmetical calculations made in the Payroll Canvass Reports.
- f. Schedule Requirement: The Contractor will satisfy all requirements and submissions as described in Section VIII. E. "Baseline and Monthly Update Schedules."
- g. Subcontractor Payment Certification: The Contractor must submit a Subcontractor Payment Certification in a form approved by the Chief Procurement Officer. The Certification must list the estimated amount to be paid to each Subcontractor, supplier and the Contractor for the Payment Estimate period. The information provided in the certificate may be posted by the Chief Procurement Officer on the City's website. Vendor numbers must be shown for all companies listed.
- h. The Commissioner may, from time to time, require additional documentation to facilitate payment. Contractor will comply with any reasonable request for additional documentation.

D. Payment for Stored Material.

- 1. Payment of stored material on the project site will be one hundred percent (100%) of a valid invoice when the Contractor 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 a 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, if applicable, the Contract line item for each item of material.
- 2. Payment for material stored off-site, if authorized in Part Three of the Contract, or when approved in writing by the Commissioner and Chief Procurement Officer, will be one hundred percent (100%) of a valid invoice when the Contractor has provided documents 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 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 Contractor-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 Contractor has complied with procedures satisfactory to the Commissioner to establish the City's title to such materials or 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 Contractor. The Contractor must provide the Construction Manager 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 Contractor's certification required by paragraph 2.d(2) above, the Contractor must prepare and execute 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 IX 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 there upon become the sole property of the City.
- h. The Contractor 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.

E. Retainage.

Pursuant to the Chicago Municipal Code provision entitled Retainage in Title 2, Ch. 2-92, Sect. 2-92-250 and 49 CFR 26.29, no retainage shall be withheld by the city. As a matter of prompt payment to subcontractors as required by Section IX.H, Contractor must not withhold retainage from subcontractors in any form, including but not limited to administrative fees.

F. Payments Withheld.

1. No payment shall be made to the Contractor until certificates of insurance, bonds, or other evidence of compliance by the Contractor with all the requirements of the Contract for insurance and bonds have been provided to the Commissioner. 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 Contract have been filed with the Commissioner.
2. The Commissioner may decline a Pay Estimate if, in the Commissioner's opinion, the Pay Estimate is not adequately supported. If the Contractor and Commissioner cannot agree on a revised amount, the Commissioner will process the Pay Estimate in the amount the Commissioner deems appropriate.
3. The Commissioner may decline to process any Pay Estimate or may rescind in whole or in part any approval previously made to such extent as may be necessary in the Commissioner's opinion because of any failure of the Contractor to perform any obligation under the Contract, including but not limited to:
  - a. The Contractor's failure or refusal to provide the Commissioner the required Project Baseline Schedule for the Work or Monthly Update Schedule and obtain the Commissioner's approval for either as required by the Contract.
  - b. The Contractor's failure to remedy defective Work.
  - c. The Contractor's failure to make prompt payments properly to Subcontractors, employees, or material suppliers or for labor, materials or equipment, or provide partial lien waivers with pay estimates.
  - d. The Contractor's failure to maintain progress of the Work as required in the current approved Baseline Schedule, or failure to carry out the Work in accordance with the Contract as determined by the City.
  - e. The Contractor's refusal to follow City, state, federal, or Contract safety and security requirements.
  - f. The Contractor's failure to provide a plan to meet the requirements of the Chicago Residency Ordinance.
  - g. The Contractor's failure to remove equipment, materials, concrete batch plants or asphalt batch plants from the Airport as directed by the Commissioner.
4. Pursuant to 2-92-270 of the Municipal Code of the City of Chicago, the Chief Procurement Officer may also notify the Contractor that payments to the Contractor will be suspended if the Chief Procurement Officer has determined that the Contractor has failed to pay any Subcontractor, employee, or workman, for Work performed. If Contractor has not cured a failure to pay a Subcontractor, employee or workman within 10 days after receipt of such notice, the Chief Procurement Officer may request the Comptroller to apply any money due, or that may become due, to Contractor under the Contract to the payment of such Subcontractors, workmen, and employees and the effect will be the same, for purposes of payment to Contractor of the Contract Price, as if the City had paid Contractor directly. Further, if such action is otherwise in the City's best interests, pursuant to 2-92-245 of the Municipal Code of the City of Chicago, the Chief Procurement Officer may (but is not obligated to) request the Comptroller to make direct payments to Subcontractors for monies earned on contracts and the effect will be the same, for purposes of payment to Contractor of the Contract Price, as if the City had paid Contractor directly. The City's election to exercise or not to exercise its rights under this paragraph shall not in any way affect the liability of the Contractor or its sureties to the City or to any such Subcontractor, workman, or employee upon any bond given in connection with such Contract.

5. The City's rights under Section IX.F are cumulative to any other rights provided under the Contract.

G. Final Payment

1. Final payment shall not be made until all of the tasks called for in the subcontract have been accomplished and documented as required. Upon Substantial Completion of the Project, the Contractor must notify the Construction Manager, in writing, that the Project will be ready for inspection and/or testing on a definite date. Notice will be given at least fifteen (15) calendar days in advance of said date. If the Construction Manager concurs that the Project will be ready for inspection, testing, and/or Commissioning on the date given and recommends an inspection to the Commissioner, 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, testing, and/or Commissioning to determine whether the Project is Substantially Complete shall not relieve the Contractor of its responsibilities under the Contract Documents. The Contractor is required to furnish access for the inspection, testing, and/or Commissioning. Contractor must also provide: (a) MBE/WBE final lien waivers, MBE/WBE conditional final lien waivers, or an affidavit of the MBE or WBE stating the final amount earned; (b) complete certified payrolls; (c) spare stock of materials, spare parts, accessories, special tools, O&M manuals, manufacturer's warranties; and (d) all other items required by the Contract Documents or the Commissioner for achievement of Substantial Completion.
2. Final payment will be made only when all remaining Work and Punch List Work is complete and the Contractor submits to the Construction Manager a sworn affidavit that states the following:
  - a. 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.
  - b. The "Contractor's Sworn Statement and Affidavit has been provided to the Construction Manager.
  - c. All claims made by Subcontractors of any tier, suppliers, and others against the Contractor, the City, any agents of the City, the Commissioner or Construction Manager have been resolved.
  - d. "Final Waiver of Lien and Contractor's Affidavit" forms for all Subcontractors of any tier have been provided to the Construction Manager.
  - e. The Warranties and Guarantees, required by the Contract, have been provided to the Construction Manager.
  - f. All Warranties and Guarantees are in full force and effect.
  - g. The surety's written consent, signed by its authorized representative, for final payment to be made directly to the Contractor, has been provided to the Construction Manager.

- h. The Contractor 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 of the Contract or for any act or neglect of the City or its agents officials and employees relating to or connected with the Contract.
  - i. As-Built documentation including but not limited to As-Built Contract drawings, As-Built Shop Drawings and Operation and Maintenance Manuals have been provided to the Construction Manager as required by Article XII.E.
  - j. All sustainability-related documentation and, where required, final SAM Construction Checklist has been provided.
  - k. All other documents requested by the Commissioner have been provided.
3. As a prerequisite to receive payment, the Contractor must also comply with the following.
- a. The Contractor must remove all of the Contractor's trailers, equipment, leftover materials, and trash from the Project site, staging area(s) or anywhere else on the Airport. The Contractor must also restore the Contractor's staging area(s) to its pre-construction condition. If the Contractor does not comply with this requirement, the Commissioner may provide written notice to comply within a period of time determined by the Commissioner. If the Contractor fails to comply with the written notice, the Commissioner may have the work done by others, and deduct the charge from payments due to Contractor on this or any other City Contract
  - b. The Contractor must return all Airport Security Badges that have been issued to all of the Contractor's employees and all of its Subcontractors' employees of any tier. If there are any badges the Contractor does not or is unable to return, the Contractor will provide the name(s) of the individual(s) and a written explanation stating the reason the badge was not returned. The Commissioner will determine whether the Contractor has complied with this requirement and may deduct from payments due to Contractor under this or any other contract the amount then charged for lost badges pursuant to the Chicago Municipal Code, 10-36-56.

H. Prompt Payment to Subcontractors.

- 1. Incorporation of Prompt Payment Language in Subcontracts. Contractor must state the requirements of these Prompt Payment provisions in all Subcontracts and purchase orders. If Contractor fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all Subcontracts and purchase orders. Contractor and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Contractor's participation and that of its Subcontractors on this Contract.
- 2. Payment to Subcontractors Within Seven Days. The Contractor must make payment to its Subcontractors **within 7 days** of receipt of payment from the City for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with the Contract Documents and provided the Contractor with all of the documents and information required of the Contractor. The Contractor may delay or postpone payment for a to a Subcontractor when the Subcontractor's work or materials do not comply with the requirements of the Contract Documents, the Contractor is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.
- 3. 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 Contractor, 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 Contractor 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 Contractor 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/StandardFormsAgreements/Failure to Promptly Pay Fillable Form 3 2013.pdf](http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/StandardFormsAgreements/Failure%20to%20Promptly%20Pay%20Fillable%20Form%203%202013.pdf).

The report will require the Subcontractor to affirm that (a) its invoice to the Contractor 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.

4. Whistleblower Protection. Contractor shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to this Sub-Section 3.2.3. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth in Section 3.5 hereof, 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.
5. 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, Contractor 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 Contractor 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.
6. Action by the City. Upon receipt of an electronic report of a failure to pay, the City will issue notice to the contractor, and provide the contractor 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 contractor fails to demonstrate reasonable cause for failure to make payment, the City shall notify the contractor that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report:	\$50
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Second Unexcused Report:	\$100
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Third Unexcused Report:	\$250
Fourth Unexcused Report:	\$500
Fifth and Each Succeeding Unexcused Report:	\$1,000

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The liquidated damages set forth above shall be assessed per unexcused report per contract, i.e., each successive report regarding a contractor's failure to pay under this Contract will be assessed liquidated damages, regardless of which subcontractor files the unexcused report(s).

By executing this Agreement, Contractor acknowledges and agrees that the City may collect such damages by deducting any amount due to the City from the next payment to be made to the Contractor. In the event that no further payments are due to Contractor, Contractor agrees to promptly pay such liquidated damages as it may owe to the City. Failure to make such payment within thirty (30) days of receipt of notice of the assessment of liquidated damages may result in Contractor being debarred from participating in City contracts for a period of not less than one year.

Contractors are reminded that each unexcused failure to pay promptly is an event of default under the Contract and, in addition to the liquidated damages provided for in this Section, is subject to the remedies found in Section XVIII.D of this Contract. Contractors are further reminded that per Section 2-92-270 of the Municipal Code of Chicago, failure to pay subcontractors as required by law and the Contract may result in the City suspending payments to Contractor and making direct payments to such subcontractors. Any such direct payments shall be from funds due and owing to the contractor.

If the Chief Procurement Officer determines that the circumstances pertaining to a contractor's failure to pay promptly warrant excusing such non-performance, or determines that excusing such non-performance is in the best interests of the City, the Chief Procurement Officer may waive any of the remedies provided in this Section IX.H. Each such waiver is discrete, non-precedential and does not constitute a waiver of any subsequent remedies against a contractor who fails to comply with the terms and conditions set forth herein.

I. Pay Estimates and Payments Subject to Review.

1. The City shall not be precluded or estopped by any measurement, estimate, or certificate made by Contractor or any Subcontractor either before or after the completion and acceptance of the Work and payment for that Work, from showing the true amount and character of the Work performed and materials furnished by the Contractor, 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 Contract. The City will not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the City may sustain by reason of the Contractor's failure to comply with the terms of the Contract.

**END OF IX**

## **X. CHANGES IN THE WORK**

### **A. 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 Contractor's surety and the Contractor 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 Completion Date, at the discretion of the City, with the Contract Price and/or the Contract Completion Date and/or the Baseline Schedule being adjusted as appropriate. The Contractor must begin the changed work upon receipt of a Field Order. A Field Order is a written order to the Contractor, signed by the Construction Manager with the prior approval of the Commissioner and Chief Procurement Officer. The Contractor 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 Contractor will make good faith efforts to increase the participation of MBE/WBE Subcontractors already participating in the Contract.

### **B. Contractor's Request.**

The Contractor must submit to the Construction Manager written copies of any request for adjustment to the Contract Price, Contract time and/or Baseline Schedule for such changed Work promptly as required by Article X.

### **C. Payment for Changes.**

The adjustment in Contract Price, 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 sections 1 through 3 below. 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 Price and/or Contract time requires a Contract Modification pursuant to Section X.D. 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. Contractor will comply with any request for additional documentation.

1. Unit Price Basis: To the extent that such changes in the Work result in an increase or decrease in the quantities of unit priced Work 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 Contractor.
  - b. For line items that represent (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 Contractor and agreed to by the Commissioner, subject to approval of the Chief Procurement Officer, in a method consistent with paragraph C.2 "Proposal Basis".

The negotiated unit price can be higher, lower, or equal to the unit price as bid by Contractor.

If the Commissioner and Contractor are unable to agree on a negotiated unit price, 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 Contractor for submission to the City for execution. However, the Contractor may dispute the amount of the unit price determined by the Commissioner as a Change Claim pursuant to Section X.G.

- c. For line items that represent ten percent (10%) or more of the Contract Price, and are deleted in their entirety, the Contractor will only be compensated for any materials or equipment that were ordered in accordance with the approved Baseline Schedule and approved submittal prior to Contractor'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. Contractor shall not be entitled to any lost profits on Work that was deleted, or any other costs or compensation.
  - d. The Contractor must provide a breakdown by Contract line item listing the total percentage of each line item attributable to a M/WBE firm.
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 Contractor.

If the changed Work is to be completed on a proposal basis, a proposal for the changed Work must be provided by the Contractor to the Construction Manager 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 Contractor will submit a Time and Material Work Report as required in Paragraph X.C.3 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 Contractor, as required by Section X.C.3.n., until a proposal is agreed to by the Contractor and City through the signing of a Contract Modification. If there is no agreement between the Contractor 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 as provided for under Section X.C.3.

Proposal Pricing: The proposal submitted shall be a starting point for negotiation between the City and Contractor. Any proposal submitted in writing by the Contractor for consideration for changed Work to be done 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 property damage, liability, and workman's compensation insurance premiums, 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 Contractor must furnish satisfactory evidence of the rate or rates paid for such insurance and taxes.

- c. **Material:** Cost of materials plus an amount not to exceed fifteen percent (15%) of the cost of material to cover profit and handling charges of contractor performing the Work. Material cost must be supported by quotations from the suppliers and must be net of any discounts or rebates offered by the suppliers.
  - d. **Equipment:** For equipment owned by the Contractor, 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 Contractor, 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 Contractor or other information concerning the expense of operating that type of equipment.
  - e. **Cost for Increase in Performance Bond:** The Contractor must furnish the Construction Manager 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 single Subcontractor or multiple subcontractors,** 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. **MBE/WBE/ Breakdown:** The Contractor 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, MBE/WBE).
3. **Time and Material Basis:**

**Procedure:** The Construction Manager will provide the Contractor 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 Contractor 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 Contractor cannot agree on a price based on a proposal prior to the time the Work is 50% complete, the Work shall be paid for on a time and material basis. The Contractor must notify the Construction Manager of all Time and Material Work in advance in order for work to be verified. The Contractor will fill in detailed information on the Work Report and have it signed by the

Construction Manager at the end of the shift. The Contractor will submit the Work Report to the Construction Manager within twenty-four (24) hours of completion. All invoices for changed Work must be submitted by Contractor within fifteen (15) days after completion of the changed work. Contractor'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 Contractor.

Time and Material Billing:

- a. Labor: For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, the Contractor 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. 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. No additional compensation beyond the 30% will be allowed.
- b. The Contractor 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 3a. and an amount equal to ten percent (10%) of above 3b. will also be paid to the Contractor to cover jobsite general conditions, overhead, and profit.
- d. No payment will be made for labor performed on a time and material basis until the Contractor has furnished the Construction Manager 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: For property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions and social security taxes on the time and material Work, the Contractor shall receive the actual costs, to which ten percent (10%) will be added. No payment will be made for insurance and payroll taxes until the Contractor has furnished satisfactory evidence of the rate or rates paid for such insurance and tax.
- f. Materials: For materials accepted by the Commissioner and used as an integral part of finished Work, the Contractor shall receive the actual costs of such materials 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 Contractor 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 agreed upon in writing before such Work is begun and no percent shall be added. The salvage value of such materials shall be taken into consideration in the reimbursement agreed upon.

- h. No payment will be made for material costs until the Contractor 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 Contractor's stock, then in lieu of the invoices, the Contractor 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 Contractor. The price quoted for such material must be reasonable and acceptable as per the normal industry practice.
- i. Equipment: For equipment owned by the Contractor, 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 Contractor, 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 Contractor or other information concerning the expense of operating that type of equipment.
- j. When equipment is rented, the Contractor shall receive actual rental cost as shown by original receipted bills to which five percent (5%) shall be added which shall compensate Contractor 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 (see C.3.n below). 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 Contractor the actual increase in cost of its performance bond. The Contractor 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 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 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 Contractor 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 Section X.C.3.a. through m.
- n. Documentation: For additional Work performed on a time and material basis the Contractor must each day submit to the Construction Manager 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 Contractor and the Construction Manager. Failure of the Contractor to submit Daily Work Reports to the Construction Manager within 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. MBE/WBE/ Breakdown: The Contractor 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, MBE/WBE).
- 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 Contractor commencing the Work.

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 Contractor, the Commissioner may require the Contractor to supply verification that the employees' Social Security Tax, Federal Unemployment Tax, and State Unemployment Tax limits have not been exceeded.
  - (2) 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 Contractor 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.
  - (3) If the Contractor enters into a subcontract, the Contractor will be allowed an additional two percent (2%) of the Subcontractor's premium time billing to cover the Contractor's supervisory and related expense on subcontract operations. The Subcontractor is not allowed the additional two percent (2%) if it sublets its Work.
  - (4) Daily Work Reports in the format designated by the Commissioner for the premium time hours must be kept and signed daily (in the format designated by the Commissioner). 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.



4. 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.

5. 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 X.C.3, f will apply.
- c. Expenses incurred by the City: Upon written request of the Commissioner and Chief Procurement Officer, the Contractor will pay the bills that are the responsibility of the City. The Contractor will be reimbursed for the actual amount paid out to which will be added a mark-up as specified in Section X.C.3 above.
- d. 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.

D. 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 Contractor (except as provided in Section X.C.3). Contract Modifications resulting in Contract Price adjustments in excess of \$5,000 require execution by the Mayor, the Comptroller and the Chief Procurement Officer. Payment for Contract Modifications and/or an adjustment in Contract Completion Date will be made after the Contract Modification is executed by the City.

E. Contractor'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 Contractor must sign will state, "By executing this Contract Modification, Contractor 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."

F. Failure to Comply with Order.

The Contractor must promptly proceed with any changes in the Work or Project Schedule or Contract time as directed by Field Order in writing, in accordance with Section X.A, with or without the Contract Modification. The Contractor's refusal or failure to proceed promptly with the changed Work or changes in the Project Schedule as directed will constitute an event of default under the Contract.

G. Change Claims.

1. If the Contractor and the Construction Manager are unable to agree upon an adjustment in Contract Price and/or Contract Completion Date for changed Work in accordance with

Section X.C, which is executed by the City under Section X.D, the Contractor may make a claim for the changed work under this Section X.G. ("Change Claims") The Contractor expressly consents to both the time requirements and notice content requirements for making a Change Claim under this Section X.G. The Contractor acknowledges that the notice requirements set forth in this Section X.G. shall be strictly enforced and agrees that any failure on the part of the Contractor to provide notice strictly in accordance with the requirements of this Section X.G constitutes a waiver of the Contractor's right to make a Change Claim for changes in the Work or to file a dispute to the Chief Procurement Officer under Article XVII. The Contractor further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section X.G. shall not be subject to or diminished by any claim on the part of the Contractor that the City or any person acting on behalf of the City directed the Contractor to make changes in the Work or had actual or constructive knowledge of any changes in the Work. The Contractor further acknowledges that the time requirements and notice content requirements of Section X.G. 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 Contractor and Construction Manager are unable to agree on the price and/or time in connection with a change to the Work pursuant to a Field Order or attributable to direction from the Construction Manager on how and when to proceed, after notification by the Contractor of differing site conditions, the Contractor must, within fifteen (15) days of completing the changed Work directed by Field Order or attributable to differing site condition(s), provide written notice to the Construction Manager of the amount of money and/or time sought by the Contractor indicating the contractual and factual basis for each and designate such as a "Notice of Claim".
  3. The Construction Manager shall, within thirty (30) days from receipt of the Notice of Claim, respond by: requesting a meeting with the Contractor; making a written request for additional information from the Contractor, including but not limited to a general statement of the basis for the claim, the facts underlying the claim, the notice to the Construction Manager of the change that gave rise to the claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the claim; taking other action to attempt to resolve the Notice of Claim, and/or advising the Contractor in writing that it should file a Claim under Article XVII, Claims and Disputes. Any steps taken by the Construction Manager to resolve the Notice of Claim shall not exceed sixty (60) days from receipt of the Notice of Claim unless the Contractor agrees to an additional amount of time in writing. The Contractor and Construction Manager 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 X.D.
  4. If the Notice of Claim cannot be resolved as provided for in Section X.G., the Contractor must follow the requirements of Section XVII.A, "Claims" and XVII.B, "Disputes".
  5. If the Contractor does not agree with the adjustment for time and/or compensation proposed by the Construction Manager, the Contractor must follow the procedures set out by the Contract to file a Claim and/or Dispute as provided in Article XVII. If the Contractor 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 the Contractor's waiver, the Commissioner may file a Dispute, pursuant to Section XVII.B, 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.
- H. City Audit.  
All documents, records, books, and accounts, relating to changes in the Work are subject to the audit provisions of Article XII.D.2.

#### **END OF X**

## **XI. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

### **A. Definitions.**

1. "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. The term "Shop Drawings" as used herein includes, but is not limited to: fabrication, erection, layout and setting drawings; manufacturers' standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and piping; duct and conduit systems; and methods of construction as may be required to show that the materials, equipment or systems and the position thereof conform to the Contract's requirements. Shop Drawings will establish the actual detail of all manufactured and fabricated items and indicate the proper relation to adjoining Work.
2. "Product Data" are illustrations, standard schedules, performance charts, instructions, descriptive literature, catalogs and brochures, performance and test data, diagrams and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.
3. "Samples" are physical examples, which illustrate materials, equipment or workmanship and establish standards and measures by which the Work will be accepted. The term "Samples" as used herein includes materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the specifications and any other samples as may be required by the Commissioner to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics. The various parts of the Work will be in accordance with the reviewed samples.
4. "Submittal" refers to Shop Drawings, Product Data, or Samples and other items as may be required by the Contract Documents.

### **B. Contractor's Responsibilities and Submittal Procedures.**

1. Providing Shop Drawings, Product Data, and Samples is part of the scope of Work under this Contract and will be done at the expense of the Contractor and to the satisfaction of the Commissioner.
2. The Number of Shop Drawings, Product Data, and Samples to be submitted will be determined by the Commissioner and indicated in Section XI.B.12.
3. The Contractor must submit to the Construction Manager such Shop Drawings, Product Data, Samples, and other data required for the Work involved under this Contract in accordance with the approved Baseline Schedule and the form designated by the Commissioner entitled "Index and Schedule for Submission of Shop Drawings and Samples" (hereafter "Index and Schedule").
4. The "Index and Schedule" must be updated with the Baseline Schedule or as required by the Commissioner and will include a list of Shop Drawings, Product Data, Samples, and other data to be reviewed, a schedule of proposed submittal dates, and the date of manufacture, construction or erection. The dates listed in the Index and Schedule will allow sufficient time for review and processing by the Commissioner and review by the Consultants and re submittal, if necessary, of Shop Drawings or other data before the Shop Drawings and Samples are needed by the Contractor. No extensions of time will be granted to the Contractor because of its failure to have Shop Drawings, Samples and Product Data submitted in ample time to allow for review.

5. The Contractor's submission of all Shop Drawings, Samples and Product Data to the Construction Manager for review shall not relieve the Contractor from its responsibility in preparing and submitting proper Shop Drawings, Samples and Product Data in accordance with the Contract Documents. By submitting Shop Drawings, Product Data, and Samples, the Contractor represents that it has determined and verified all materials, field measurements, field conditions and verified quantities related thereto, or will do so, and that it has checked and coordinated the information contained within such submittal with the requirements of the Work and of the Contract Documents.
6. All Submittals must be transmitted to the Construction Manager in compliance with the manual entitled "Procedure for Approval of Shop Drawings, Product Data, Samples and Record Documents" which is incorporated into the Contract.
7. All Submittals must be transmitted to the Construction Manager on the form designated in the manual entitled "Procedure for Approval of Shop Drawings, Product Data, Samples and Record Documents" and must include:
  - a. Project title and number.
  - b. The names of:
    - (1) Contractor
    - (2) Subcontractor
    - (3) Contract Number
    - (4) Supplier
    - (5) Manufacturer
    - (6) Separate details when pertinent
  - c. Date and revision dates.
  - d. Identification of product or material.
  - e. Relation to adjacent structure or materials.
  - f. Field dimensions, clearly identified as such.
  - g. Specification section number and paragraph.
  - h. Applicable standards, such as ASTM number or Federal Specification.
  - i. A blank space, minimum of 6 inches by 6 inches, for the review stamp.
  - j. Identification of deviations from Contract Documents.
  - k. Other data pertinent to the product or material.
  - l. Contractors stamp of Approval specified in Section XI.B.9.
  - m. Installation location, where applicable.
8. Any Submittal, which in the Commissioner's opinion is not complete and in proper form, will be returned to the Contractor without review. Submittals that are not complete or not in proper form include, but are not limited to, those which are not: clear and legible; collated into sets; complete; free of errors; checked by the Contractor; representative of the actual material or assembly and bearing the Contractor's approval stamp or other mark showing review and approval by the Contractor. The Contractor must not submit as Shop Drawings duplicates or reproductions of any Contract documents issued by the City.
9. All Shop Drawings, Product Data, and Samples must be examined and coordinated by the Contractor and will be dated and stamped by the Contractor, using the language designated by the Commissioner, indicating that the Submittal has been reviewed and checked prior to submittal and found to be in conformance with the Contract Documents. The Contractor must submit all Shop Drawings, Samples and Product Data to the Commissioner for review with 1) an accompanying transmittal letter which states the Project by title and project number and identifies the Work, material, or product by Specification Section and Article number and 2) the completed form entitled "Shop Drawing Data". The Contractor must coordinate Submittals into logical groups or sets to facilitate review of the several items.
10. No extensions of time will be allowed because of the Contractor's failure to submit Shop Drawings and other Submittals in ample time to allow review, possible rejection, and resubmittal and final review.

11. The Contractor must furnish Shop Drawings, Samples, Product Data and information which permit the Commissioner to identify and review the construction and to determine whether the Work complies with the requirements of the Contract Documents.
12. The Contractor must submit not less than the following quantities unless a greater number is specified herein or is required in the detailed Technical Specifications or is required by the Commissioner:
  - a. Shop Drawings: Submit one (1) original and six (6) copies of Shop Drawings.
  - b. Product Data: Submit six (6) copies of Product Data.
  - c. Samples: Submit four (4) Samples.
13. Prior to submitting Shop Drawings, Product Data, or Samples, the Contractor must notify the Commissioner in writing if there are any deviations in the Submittals from the requirements of the Contract. If any deviations from the Contract requirements are rejected by the Commissioner or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensated with a time extension.

C. Review by the Commissioner.

1. Submittals shall be reviewed by the Commissioner for compliance with the Contract Documents. In reviewing Submittals, the Commissioner will not verify dimensions and field conditions. Any review will not be construed as a completed check nor will it relieve the Contractor, Subcontractors, manufacturers, fabricators, or suppliers from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents, nor will it relieve the Contractor from responsibility for errors of any sort in Shop Drawings, Samples, and Product Data nor from responsibility for proper fitting of the Work, nor from the necessity of furnishing any Work required by the Contract Documents which may not be indicated on Shop Drawings when reviewed. The Contractor will be solely responsible for any quantities, which may be shown on the Shop Drawings. The Commissioner's review of a specific item will not indicate approval of an assembly of which the item is a component.
2. The Contractor must modify and resubmit Submittals, as required, until review permitting fabrication is obtained. The Contractor will not fabricate products, begin Work, order or have delivered any material, equipment or systems, which requires a reviewed Submittal, until return of the submittal with a stamp authorizing Work to be done. The stamps are indicated in Section XI.C.3.
3. After review by the Commissioner, the Commissioner shall return a copy of reproducible Shop Drawings, which will have been stamped by the architect/engineer of record and/or CDA as follows:
  - a. The stamp "A" signifies "No Exceptions." Indicates final action and that no changes need to be made to the submittal. The Contractor may proceed with the work for that Submittal. Resubmittal is not required.
  - b. The stamp "B" signifies "Exceptions as Noted." This indicates that the Submittal is accepted subject to corrections and/or comments noted. The Contractor may proceed with the Work for that Submittal provided the Contractor incorporates the reviewer's corrections and/or comments in the Work. Resubmittal is not required.
  - c. The stamp "C" signifies "Revise and Resubmit." This indicates the Submittal was reviewed and does not meet all the requirements necessary to proceed with the work associated with the Submittal. The Contractor must resubmit in accordance with the reviewer's corrections and/or comments made regarding the submittal. Submittals marked in this manner must not be released for fabrication, delivery, or construction.

- d. The stamp "D" signifies "Rejected." This indicates that the Submittal does not meet requirements set forth in the Contract Documents. The Contractor must resubmit this work in accordance with the Contract requirements and any corrections and/or comments made regarding the submittal by the reviewer. Submittals marked in this manner will not be released for fabrication, delivery, or construction.
  - e. The stamp "N" signifies "No Action Taken". This indicates that the Contractor has met the contractual requirement for providing drawings and calculations for equipment, falsework, shoring, bracing, and other temporary structures or temporary services required for the work, designed, signed, and sealed by an Illinois licensed engineer employed by that Contractor. The Contractor and the licensed engineer employed by that Contractor will be solely responsible for, including but not limited to, the proper implementation, execution, installation, operations, and/or construction procedure or method covered by this Submittal.
- 4. If the Shop Drawings require revision, the Contractor must notify the City and all appropriate parties, in writing, that the reviewed set has been withdrawn and the Contractor must submit the substitution set in accordance with the above procedures.
  - 5. Submittals that are rejected or require revisions must be corrected and resubmitted to the Construction Manager to maintain the approved Index and Schedule and Baseline schedule.
  - 6. Submission and Review of Samples: The Contractor must submit not less than four (4) Samples of materials to the Construction Manager for approval as indicated in the Technical Specifications. In case 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 Contractor to indicate the full range of such characteristics which will be present in the finished products; and such product delivered or erected without Submittal and review of full range Samples will be subject to rejection. All Samples will be properly labeled to indicate type of material submitted, intended use, manufacturer's name, project name, Contractor's name, Subcontractors' and suppliers' names, include an indication of compliance requirements, including FAA, and be accompanied with a letter of transmittal containing similar information, together with the specification section number for identification of each item. Each tag or sticker must have clear space for the stamps of the Contractor and Commissioner. Samples must be inspected and reviewed. Notice of the result of the review shall be provided to the Contractor with one of the stamps indicated in Section XI.C.3. Rejected Samples will be returned. Accepted Samples will be retained by the Commissioner and will 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.
  - 7. Product Data: After review by the Commissioner, two (2) sets of Product Data stamped by the Commissioner as previously described in Section XI.C.3 shall be returned to the Contractor.
  - 8. When reviewed by the Commissioner, Shop Drawings, Samples and Product Data will become a part of the Contract, and the materials and equipment furnished will be in conformity with the same, provided that the review of such Submittal will in no way relieve the Contractor from its responsibility for the proper installation and performance of any material or equipment or from its liability to replace the same should it prove defective.

**END OF XI**

## **XII. PROJECT RECORD DOCUMENTS, PROJECT ACCOUNT RECORDS AND DAILY PROGRESSREPORTS**

### **A. "As-Built" Drawings.**

1. As the Work progresses, the Contractor and the Subcontractor for each trade or division of Work, under the direction of the Contractor, must keep a complete and accurate record of the following:
  - a. Changes and deviations between the Work as actually installed and the Work as shown on the Contract Drawings and the Shop Drawings.
  - b. The specific locations of piping, valves, ductwork, manholes, handholes, equipment, and other such Work which were not located or changed location from that shown on Contract Drawings.
  - c. Equipment schedules indicating manufacturers' names and model numbers installed.
2. Changes, deviations, and other information must be neatly and correctly recorded on a full sized set of Contract Drawings. This record set of Contract Drawings must be kept at the job site for inspection by the Commissioner. Upon completion of the Work, the Contractor must submit one (1) final set of Contract Drawings with changes, deviations or other information marked in red ink to show the as-built conditions of the Project and three (3) copies ("As-Built Drawings") to the Construction Manager for approval and acceptance by the Commissioner prior to the completion of the Punch List.
  - a. The Contractor must submit half-size red-line as-built drawings for any work related to a FAA facility at the completion of a phase, milestone, or as required for acceptance by the FAA.
3. At the time "As-Built Drawings" are delivered to the Construction Manager, the Contractor and each Subcontractor must certify, in writing, that the "As-Built Drawings" are complete and accurate.

### **B. Operation and Maintenance Manuals, Instructions, and Parts List.**

1. The Contractor must furnish to the Construction Manager one bound copy of operation and maintenance manuals, instructions, specifications relative to the assembly, installation, alignment, placing in operation and maintenance of equipment, systems and construction under this Contract prior to Substantial Completion. Two (2) additional bound copies and two (2) electronic copies, in a format acceptable to the Commissioner, must be furnished to the Construction Manager prior to Final Completion.

For all items requiring spare parts and materials, the Contractor must submit five (5) bound copies of the list of required spare parts and materials for each, including manufacturers product, material, part or re-order numbers, name, address, and telephone numbers of local suppliers and manufacturer's corporate offices.

For any work related to a FAA facility, the Contractor must submit Operation and Maintenance Manuals and Test Results at the completion of a phase or milestone or as required for acceptance by the FAA.

2. The bound copies must be permanently reproduced on heavy paper and will be in addition to any instruction and parts lists attached to the equipment or materials when delivered or submitted in conformance with the Contract Documents.
3. Contractor shall submit one (1) original and four (4) copies of all guarantees and warranties required by the Contract Documents from Contractor, subcontractors, suppliers and/or manufacturers.

C. Record Shop Drawings.

Record Shop Drawings and Product Data must be submitted for all items reviewed as Shop Drawings, and have a status of "A", "B" or "N". Contractor must provide three (3) bound copies of all submittals in loose-leaf binders and two (2) electronic copies in a format acceptable to the Commissioner. Binders must be divided by Specification number and contain an index of all items, including Shop Drawings.

D. Record Documents.

All Record Documents must be prepared and transmitted to the Construction Manager in compliance with the manual entitled "Procedure for Approval of Shop Drawings, Product Data, Samples and Record Documents" which is incorporated into the Contract.

E. Delivery Requirements.

As a prerequisite to the Punch List completion and as a condition to its review by the Commissioner, the Contractor must deliver to the Construction Manager, in suitable transfer cases clearly marked "Record Documents": the "As-Built Drawings", Record Shop Drawings. Product Data, instructions, parts lists, and operations and maintenance manuals arranged in proper order and indexed.

F. Electronic Records.

Upon request by the Commissioner, Contractor shall provide the City electronic versions of any hard-copy record documents that the Contractor is required to prepare pursuant to the Contract Documents.

G. Project Account Records.

1. Project Data and Records:

- a. All books and accounts kept by the Contractor in connection with the Contract shall be open to the inspection of the Commissioner or the Commissioner's authorized representative and all City of Chicago authorized agencies and their representatives. Promptly following the preparation of periodic payrolls of the Contractor and of each of its Subcontractors, the Contractor must furnish the Construction Manager with such number as may be required of certified copies of such payrolls.
- b. The Contractor and each Subcontractor must also keep an accurate record showing the names and occupation of all laborers, workers and mechanics employed by them in connection with the Work and showing also the actual hourly wages paid to each of such workers, which record will be open at all reasonable hours to the inspection of the Commissioner and to the Director of Labor (State of Illinois).
- c. The Contractor must at any time when required by the Commissioner or Chief Procurement Officer, furnish to the Construction Manager a written statement, verified by affidavit, giving the names and addresses of all persons, firms, and corporations who have up to the date thereof furnished labor or materials in or about the performance of the Contract and the amounts due or to become due to said parties.
- d. The Contractor and any Subcontractor must furnish the Construction Manager with such information as the Commissioner may require relating to the 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 item, equipment time distribution and any other information which the Commissioner may require. The



Contractor must, on request, furnish the Construction Manager with copies of delivery tickets and invoices, in triplicate, covering all expenditures on the Contract.

2. Audits:

- a. The Contractor must maintain, or cause to be maintained, records showing actual time devoted and costs incurred. The Contractor must maintain, or cause to be maintained, its books, records, documents, and other evidence, and adopt, or cause to be adopted, accounting procedures and practices sufficient to reflect properly all costs of whatever nature, claimed to have been incurred and anticipated to be incurred for or in connection with the Project for five (5) years after the date of Final Completion of the Project. This system of accounting will be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- b. The Contractor must furnish, or cause to be furnished, to the Commissioner such information as may be requested relative to the progress, execution, and cost of the Project. All books and accounts in connection with the Project must be open to inspection by authorized representatives of the City. The Contractor must make these records available, or cause them to be made available, at reasonable times during the performance of the Work under this Contract and will retain them in a safe place and must make them available for inspection for at least five (5) years after the Project Completion Date. No provision in this Contract granting the City right of access to records and documents is intended to impair, limit, or affect any right of access to such records and documents, which the City would have had in the absence of such provisions.
- c. The City may in its sole discretion audit the records of Contractor or its Subcontractors, or both, at any time during the term of this Contract or within five years after the Contract ends, in connection with the goods, Work, or services provided under this Contract. If, as a result of such an audit, it is determined that Contractor or any of its Subcontractors has overcharged the City, the City will notify Contractor. Contractor must then promptly reimburse the City for any amounts the City has paid Contractor due to the overcharges and also some or all of the cost of the audit, as follows:
  - (1) if the audit has revealed overcharges to the City representing less than 5% of the total Project cost, based on the Contract Prices, of the goods, Work, or services provided, then the Contractor must reimburse the City for 50% of the cost of the audit;
  - (2) if, however, the audit has revealed overcharges to the City representing 5% or more of the total Project cost, based on the Contract Prices, of the goods, Work, or services provided, then Contractor must reimburse the City for full cost of the audit.

Failure of Contractor to reimburse the City in accordance with (1) or (2) b above is an event of default under this Contract, and Contractor will be liable for all the City's cost of collection, including any court costs and attorneys' fees.

3. Confidentiality: All of the reports, information, or data, prepared or assembled by or provided to the Contractor under this Contract are confidential and the Contractor agrees that, except as specifically authorized herein or as may be required by law, neither it or its subcontractors must make available said reports, information, or data, to any other individual or organization, without the prior approval of the Commissioner.

**END OF XII**

### **XIII. TESTING AND INSPECTION**

#### **A. General Inspection.**

1. All materials and equipment and each part or detail of the Work is subject at all times to inspection, testing and approval by the Construction Manager, the Commissioner, and/or a consultant engaged by the City to perform such inspections and testing (collectively, "City Inspector"). The Contractor will be held strictly responsible for performance of the Work that complies with the express requirements and intent of the Contract Documents in regard to quality of materials, workmanship and the diligent execution of the Contract. Such inspection may include mill, plant, shop, field inspection and any material or equipment furnished. The City Inspectors must be allowed access to all parts of the Work and must be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. The City Inspectors have the right to take progress photos of any part of the Work.
2. All material used must be inspected, tested, and approved before being incorporated in the Work. All inspections and tests performed by the City Inspector are to verify that the materials being furnished by the Contractor meet the Contract requirements and will be used as the basis for Pay Estimates. Payment will not be made for uninspected, untested, or otherwise unauthorized use of materials incorporated into the Work. The Contractor, at its own expense, may perform or have others perform similar tests for the sole purpose of maintaining the Quality Control of the material being provided. Payment will be based solely on the results of those tests performed by the Commissioner.
3. Material and equipment inspection must be as hereinafter specified in the Section XIII.B, "Materials and Equipment Testing and Inspection".
4. The Contractor must remove, or uncover such portions of the finished Work as the Commissioner may direct before the final acceptance of the same to allow examination by a City Inspector. After the examination, the Contractor must restore said portion of the Work to the standard required by the Contract Documents. If the Work thus exposed or examined proves acceptable, the expenses of uncovering or removing and the replacing of the parts removed shall be paid for as changed Work, unless otherwise provided in the Contract Documents, but, if the Work so exposed or examined is unacceptable, the expense of uncovering or removing and the replacing of the same in accordance with the Contract Documents shall be borne by the Contractor.
5. Except as may be otherwise specified in other sections of the Contract Documents, a City Inspector will make inspection of all Work included in the Contract as soon as practicable after notification by the Contractor as provided in Section IX.G.1 that the Work is substantially completed and ready for inspection. If the Work is not acceptable to the Commissioner at the time of such inspection, the Construction Manager will inform the Contractor as to the particular defects to be remedied before the Project will be determined to be substantially complete.
6. When the Contract includes Work for which the Federal Government is to pay a portion of the cost thereof, such Work shall also be subject to the inspection and approval by the representatives of the Federal Government, but such inspection and approval will in no sense make the Federal Government a party to the Contract.
7. When the Contract includes Work that will ultimately be owned and/or maintained by a specific outside agency or other third party, such Work shall also be subject to the inspection by the representatives of the outside agency or third party, but such inspection will in no sense make the outside agency or third party a party to the Contract.

B. Materials and Equipment Testing and Inspection.

1. As stated in Section XIII.A "General Inspection", all materials and equipment may be inspected and tested by a City Inspector. For materials which are not an integral part of equipment and for which Samples can be submitted, the Contractor must give sufficient advance notice of placing orders to permit tests to be completed before the materials are incorporated into the Work and must afford such facilities as the City Inspector may require for collecting and forwarding samples and making inspections and tests. All Samples must be furnished without charge. The Contractor must not make use of or incorporate into the Work the materials represented by the Samples until tests have been made and the materials found to be in accordance with the requirements of the Contract Documents.
2. The Contractor must notify the Construction Manager that materials and/or equipment have been delivered to the job site and inspected by the Contractor, by submitting a "Request for Inspection of Material" form. The Construction Manager shall inspect the material and/or equipment and make a recommendation to the Commissioner as to its conformance with the requirements of the Contract Documents prior to its incorporation into the Work.
3. For materials that are an integral part of machinery or equipment or of parts of equipment normally stocked by the Contractor or Subcontractor, the Contractor may furnish copies of certified tests made at the time of production.
4. In addition to on-site inspection and testing, the City Inspectors shall have free entry, at all times while Work is being performed, to all parts of a manufacturer's works that concern the manufacture of the material or equipment ordered for the Project. The City Inspectors shall be permitted to examine all components and subassemblies. Assemblies and parts must be numbered for identification. The Contractor (or manufacturer) must provide the City Inspectors with a detailed production schedule prior to the first inspection. After a study of the production schedule, the City Inspectors must inform the Contractor (or manufacturer) of its methods, extent of inspection and facilities desired. The manufacturer will afford the City Inspectors, without charge, all reasonable facilities to provide satisfactory documentation that the material or equipment is being furnished in accordance with the Contract Documents. All tests and inspection shall be made at the place of manufacture prior to shipment and at the Contractor's or manufacturer's expense.
5. Part Three of the Contract Documents may include the cost of travel and living expenses for a specific number of City employees and/or other persons for a specific test. The travel and living expenses for any additional City employees or additional person(s) will not be a cost to the Contractor. The manufacturer or Contractor will furnish a certification of the ordered tests after completion. The Commissioner reserves the right to re-inspect all materials or equipment, which have been inspected and accepted at the place of manufacture or source of supply, after they have been delivered to the site and to reject any which do not meet with the requirements of the Contract Documents.
6. If the preparation of the material or equipment is at a far distant or inaccessible location, or if it is divided into unreasonably small quantities, or widely distributed to an unreasonable extent, or if the percentage of rejected material is unreasonably large, or if the Contractor's production schedule and arrangements for test and calibration is such that the cost of inspection by the City is unreasonably high, the additional cost of extra inspection resulting therefrom must be born by the Contractor. The Commissioner shall be the sole judge of what is to be deemed extra inspection.

If the City Inspector is a City employee, the actual travel of the City Inspector, limited to the applicable amounts set forth in the City's travel reimbursement guidelines, must be included in the additional cost of extra inspection and paid by the Contractor. If the City Inspector is not a City employee, the City Inspector's travel expense reimbursement shall be as stated in the City's contract with the City Inspector, limited to the applicable amount

set out in the City's travel reimbursement guidelines, must be included in the additional cost of extra inspection, and paid by the Contractor.

7. Unless otherwise provided, all materials will be sampled and tested in accordance with the latest published standard methods of the American Society for Testing and Materials and revisions thereof, where such standard methods exist. In case there are no ASTM standards which apply, applicable standard methods of other recognized standardizing agencies will be used. In all cases, the standard methods and revisions thereof that will be used are those in effect on the date of the invitation for bids.
8. For any material not covered by the designated specifications of some designated society, association, institute or governmental authority, appropriate methods of testing and inspection to be designated by the Commissioner will be followed.

**END OF XIII**

#### **XIV. PROTECTION OF PERSONS AND PROPERTY, HEALTH AND SAFETY, SERVICES AND USE OF SITE**

##### **A. Protection of Persons and Property.**

###### **1. Protection of FAA Facilities.**

- a. The Contractor's operations such as trenching, jacking of pipe or casing, excavation for pavements or structures, site grading and vehicular traffic may occur over, around and under FAA facilities such as equipment houses, direct buried cables and duct banks. These facilities are critical to the operation of the air traffic control functions at the Airports and all possible steps must be taken to identify, protect and prevent damage to such utilities and to ensure their integrity throughout the period of construction activity.
- b. The Contractor must notify the Construction Manager at least 72 hours prior to any excavation in the vicinity of FAA cables or ducts. The Construction Manager in turn will contact an FAA representative at the FAA O'Hare National Airspace System or at Midway Airport FAA Airway Facilities to arrange for a joint walking tour with cable location equipment to identify precisely such cables and locations in order to assure the preservation of their vital functions during construction. It is impossible to over stress the importance and priority involved in the maintenance of the FAA facilities on the Airports.
- c. In order to access FAA facilities, the Contractor must notify the Construction Manager at least five (5) business days in advance.

###### **2. Protection of Persons and Property in Areas of the O'Hare Airport Transit System (ATS).**

- a. The following Rules govern Work and other activities performed within or near the ATS Right of Way "ROW Envelope," as defined herein. These rules are intended to protect the lives and safety of persons and to prevent property damage. The rules are applicable at all times. It is the obligation of any person working or performing activities, or directing the activities of others, within or near the ATS to ensure compliance with these rules. These rules represent the minimum requirements. Additional care should be exercised if circumstances warrant.
- b. General Information:
  - (1) The ATS is a transit system used primarily for transporting airline passengers, airline employees, and other Airport personnel to various points within the Airport. The ATS serves the three domestic terminals in the Terminal Core Area, the International Terminal, and the Long Term Parking Areas. Passenger stations are located at each of the domestic terminals (1, 2, and 3), the International Terminal, and Lot "E" in the Long Term Parking Areas. New stations may be constructed in the future. If such stations are constructed, they will also be covered by these rules as of the commencement date of their construction.
  - (2) The ATS guideway (track area) is primarily elevated, but it is at-grade in some areas of the Airport. The plans, which will be provided by the Commissioner, illustrate the location of the guideway structure. The plans also indicate the location of the traction power, facility power, and other facilities, which serve the ATS.
  - (3) ATS vehicles are designed to operate without personnel (motorman or conductors) on-board. Vehicles are controlled from the ATS Maintenance Building. The number of vehicles operating at the same time on the ATS may vary according to the time of day. Vehicles may operate individually (single car)

or jointly (as many as three cars). Vehicles may travel up to 50 miles an hour at various points along the route, and may change direction without notice or warning. Vehicles may stop at any time without notice or warning.

- (4) The schedule for ATS service may vary according to the time of day, with peak service expected between 1400 hours and 2000 hours. Vehicles may operate seven (7) days a week, twenty-four (24) hours a day, with 750-volt direct current electrical power ("v.d.c.") to the guideway on at all times. Intervals between vehicles may be as short as 90 seconds, or as long as five to seven minutes.
- (5) The ATS is powered by 750 v.d.c. electricity through its guideway. Any direct or indirect contact (touching or placement of conducting materials in contact with or near these rails) can result in death or severe injury.
- (6) Work and other activities are prohibited within certain horizontal and vertical areas adjacent to the ATS, collectively called the "Right-of-Way Envelope" ("ROW Envelope"). The clearances required to preserve the integrity of the ROW Envelope will be maintained at all times. The horizontal component of the ROW Envelope is depicted on plans, which will be provided by the Commissioner. The actual width of the horizontal ROW Envelope may vary at different locations. Regardless of the actual width, however, Work and other activities are prohibited within 2 horizontal feet from the vertical end of the tie (track support) face. Work and other activities are prohibited within five (5) feet from the edge of the slab along the at-grade portions of the ATS. The vertical component of the ROW requires a minimum vertical clearance over the guideway of thirteen (13) feet, six (6) inches. Underneath the elevated structure, Work and other activities are prohibited within two (2) feet of the bottom flange of the steel girder. The minimum vertical clearance underneath the elevated structure when it crosses paved surfaces (roadways) is fourteen (14) feet, six (6) inches, and may be lower in some specific paved areas (not designated roadways), and at unpaved locations.

c. Rules:

- (1) All persons who perform Work or other activities near or within the ROW Envelope must exercise the highest standard of care so as not to cause injury to themselves, passengers, contractors or their employees, or others; interference with the operations of or property damage to the ATS; or other property damage.
- (2) Persons performing Work or other activities near the ROW Envelope must exercise the highest standard of care so as to avoid entry on or within the ROW Envelope. Such entry has the potential to cause injury or death to themselves, passengers, contractors and their employees, or others; interference with the operations of or property damage to the ATS; or other property damage.
- (3) Entry on or within the ROW Envelope is prohibited, unless specifically permitted in writing and, then, only in the manner and at the times and locations permitted in writing by the Commissioner. Work and other activities within the ROW Envelope will not proceed without the express written authorization of the City. In no event will the City be liable or responsible for any damages for delays or other claims arising in connection with the obtaining of such authorization.
- (4) No less than thirty (30) days prior to the start of any Work or other activities near (within 10 feet) or within the ROW Envelope, a written operations plan must be prepared in writing and provided to the Construction Manager for its review. The Construction Manager will meet with the involved parties within ten (10) business days of receipt of the plan to discuss any changes, which may be required. At a minimum, the plan will include the following:

- (a) The Work or other activities to be performed; the equipment to be used; and the number of personnel or others involved.
  - (b) The schedule and proposed hours for Work or other activities to be within or near the ROW Envelope.
  - (c) Any sequential staging of the Work or other activities near or within the ROW Envelope.
  - (d) Drawings depicting haul roads, storage sites, barricades, or temporary structures to be located near or within the ROW Envelope.
  - (e) A description of measures to be taken to preserve the integrity of the ROW Envelope, and prevent interference with ATS operations or violations of these rules.
  - (f) Any other matters which may affect the ATS.
  - (g) The Construction Manager will be notified again, in writing, no more than 72 hours in advance of the start of Work or other activities to be performed near or within the ROW Envelope.
- (5) All Work or other activities within or near the ROW Envelope must be conducted, on dates designated by the Construction Manager, between the hours of 0000 (12:00 A.M.) and 0500 (5:00 A.M.). No other times will be available except with the express written permission of the City. No Work or other activities, which would inhibit normal ATS service, will be permitted within the ROW Envelope during peak service hours.
  - (6) Prior to the start of any Work or other activities within or near the ROW Envelope, any persons who may be on-site, including the Contractor, field personnel and supervisors, must attend safety classes held by the City. The persons requiring such classes will be responsible for the cost. A cost estimate will be provided upon written request.
  - (7) The persons responsible for the Work or other activities to be performed near or within the ROW Envelope must pay any costs, which the City may incur in connection with such Work and other activities, including without limitation costs associated with providing flagmen, or construction inspectors. A cost estimate will be provided upon written request.
  - (8) Power to the guideway may be disconnected, by the City, for short periods of time, when deemed permissible by the City, in its sole discretion, to allow Work or other activities to be performed near or within the ROW Envelope. Power will not to be disconnected during peak service hours. Arrangements for disconnection of power must be made with the Commissioner. City personnel assigned to this task will be identified. Only City personnel assigned to this task are authorized to disconnect power. No Work or other activities will proceed until such time as the identified City personnel indicate that the power has been disconnected.
  - (9) Work and other activities near or within the ROW Envelope must not cause damage, settlement, or displacement of any structures, equipment, track, or any other portion of the ATS. In the event of any damage, settlement or displacement of the equipment, structures, track, or any other portion of the ATS, all Work and other activities must be immediately suspended and the Construction Manager and Commissioner promptly notified. The City may decide, in its sole discretion, what measures are needed to repair any damage

to the ATS, and may order such repairs to be done by City personnel, by others hired by the City, or by the person responsible for damage. Regardless of who performs the repairs, the person responsible for the Work or other activities, which caused the damage, must bear the cost of repair and service disruption.

- (10) If the Commissioner deems, in his or her absolute sole discretion, the Work or other activities being performed near or within the ROW Envelope to be hazardous to the operations or safety of the ATS or its passengers, he or she may immediately order the suspension of such Work or other activities, and may revoke any and all authorizations to be near or within the ROW Envelope. Such order and revocation may be verbal in an emergency, with written notice to follow as soon as practicable. Such Work and other activities will immediately cease and will not be recommenced until a new authorization is received from the City. In no event will the City be liable or responsible for any damages for delay or other claims in connection with such revocation.
- (11) The City reserves the right to perform Work within the ROW Envelope, at any time, and without prior notice. Work and other activities of the Contractor to be conducted near or within the ROW Envelope, which may, in the City's sole opinion, interfere with the City's Work, will be suspended, upon written notice by the Commissioner or Construction Manager, until such time as the City indicates. In no event will the City be liable or responsible for any damages for delay or other claims arising in connection with such suspension.
- (12) The City reserves the right to issue new rules as may be needed, in the City's sole opinion, from time to time, in connection with Work or other activities being conducted near the ATS, or near or within the ROW Envelope, and such rules will be effective as of the date of issuance.

3. Protection of Existing Structures and Property.

- a. The Contractor must avoid damage, as a result of its operations, to trees, plant life, existing sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the work of other contractors and the property of the City and others and will at its own expense repair any damage thereto caused by its operations.
- b. The Contractor must be responsible for loss or damage by fire or theft of equipment, material, or other property of the CDA or the City of Chicago, incurred while such equipment, material or other property is located in any field office or on the site of the Work. The Contractor must repair or replace any such equipment, material or other property so lost or damaged, to the satisfaction of the Commissioner at no additional cost to the City.
- c. The Contractor must familiarize itself with the requirements of local and state laws applicable to underpinning, shoring and other Work affecting adjoining property and wherever required by law the Contractor will shore-up, brace, underpin, secure, and protect as may be necessary all foundations and other parts of existing structures adjacent to, adjoining and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the Work.
- d. The Contractor is responsible for the giving of any and all required notices to any adjacent or adjoining property owner or other party and such notice or notices must be served in sufficient time as not to delay the progress of the Work.
- e. The Contractor must indemnify, save and keep the City harmless from any damages on account of settlements or the loss of lateral support of adjacent or adjoining property and from all loss or expense and all damages for which the City may become liable in consequence of such injury or damage to adjacent and adjoining structures and their premises.



- (1) The provisions of the foregoing paragraph will include also and apply to any liabilities and duties placed upon the City of Chicago as owner or occupant of the property on which the improvements provided for herein are to be constructed, by the provisions of an Act entitled "An Act to prescribe the duty of an owner or occupant of lands upon which excavations are made in reference to the furnishing of lateral and subjacent support to adjoining lands and structures thereon". See 765 ILCS 140/1 et seq.

4. Protection of Utilities.

- a. The Contractor must determine the locations of all utilities in the vicinity of the site of the Work and will take suitable care to protect and prevent damage to such utilities from its operations under this Contract.
  - (1) The O'Hare International Airport Underground Construction Notification document, also known as the "Dig Book" must be prepared and submitted a minimum of twenty-one (21) calendar days prior to the commencement of any excavation and/or utility work. The Contractor cannot perform any excavation or work around existing utilities without receiving a fully executed Dig Book. The Contractor must participate with the Construction Manager in the preparation of the Dig Book.
  - (2) Contractor must include in the Baseline, Monthly Update and Three-Week Look Ahead Schedules a predecessor milestone and task to represent the submittal and execution of the Underground Construction Notification form for each activity associated with excavation and utility work. The milestone denotes the submittal of the form to the CDA for approval. The task should denote the twenty-one (21) calendar day form approval period.
- b. When performing Work adjacent to existing sewers, drains, water and gas lines, electric or telephone or telegraph conduits or cables, poles lines or poles, or other utility equipment or structures, which are located outside of the neat lines of the excavations to be made or of the structures to be constructed under this Contract and which are to remain in operation, the Contractor must preserve and maintain such utility equipment, structures, and utility marking posts in place at its own expense and will co-operate with the City department, utility company or other party owning or operating such utility equipment or structures in the maintenance thereof.
- c. The Contractor is responsible for and must repair all damage to any such utility, equipment or structures caused by its acts, whether negligent or otherwise, or its omission to act, whether negligent or otherwise and will leave such utility, equipment or structures in as good condition as they were in prior to the commencement of its operations under this Contract. However, it is hereby agreed that any such utility equipment or structures damaged as a result of any act, or omission to act, of the Contractor may, at the option of the City department, utility company, or other party owning or operating such utility, equipment or structures damaged, be repaired by such City department, utility company, or other party and in such event the cost of such repairs will be borne by the Contractor.

5. Protection of Streets, Alleys, and Public Grounds.

- a. If in the prosecution of the Work it is necessary to excavate, use or occupy any street, alley, or public grounds of the City, the Contractor must erect and maintain such barriers and, during the night time, such lights as will effectually prevent the happening of any accidents or damage to life, limb or property in consequence of such excavation, use or occupation of such street, alley, or public grounds.

- b. The Contractor will be liable for all damages occasioned by the excavation, use or occupation of any street, alley, or public grounds, or by the carelessness of the Contractor, its agents, employees, or workers and will indemnify the City against all judgments rendered against it by reason thereof.
- c. If the City is sued solely for such neglect, a judgment rendered against it will be conclusive evidence (1) of the negligence of the Contractor as aforesaid and (2) the amount of such damages recoverable from the Contractor by reason thereof. In the defense of such action, the Contractor, upon notice, agrees to cooperate with the City to the fullest extent in furnishing evidence bearing on the charges therein made.

6. Protection of Existing Trees in the Right of Way.:

- a. It is the responsibility of the Contractor to protect all trees from damage at the construction site. Any damage to trees resulting from a construction project, as determined by the Commissioner, will be repaired or replaced at the Contractor's expense.
- b. The Contractor will be required to replace any permanently damaged tree with a new tree of the same type and said new tree will have a trunk with a minimum one and one-half (1-1/2) inch diameter.
- c. The protection of trees will include bridging, tunneling, drawing, drilling or boring underneath existing trees. The surface area directly adjacent to the tree trunk will not be disturbed under the following guidelines:
  - (1) Less than 5 inches DBH trees - 2-foot radius of the tree trunk with a minimum of 3-foot depth.
  - (2) 5 inches to 20 inches DBH trees - 5-foot radius of the tree trunk with a minimum of 3-foot depth.
  - (3) Over 20 inches DBH trees - 7-foot radius of the tree trunk with a minimum of 3-foot depth.
  - (4) When bridging, tunneling, drawings, drilling or boring underneath existing trees, said Work will be accomplished directly beneath the center of the tree trunk.

B. Health and Safety.

1. Project Health and Safety:

- a. Contractor has sole and complete responsibility for implementation of a safety program. The Contractor's safety program must, at a minimum, meet the requirements of the "Chicago Airport Systems Construction Safety Manual", which is incorporated by reference and made a part of this Contract. The Contractor's safety program must include the Work of all the Contractor's Subcontractors. The Contractor's Safety Program must be submitted to the Commissioner for review and approval at least thirty (30) days before start of the Work.
- b. The Contractor shall designate a safety representative for the project. This person shall be present whenever work is being performed at the site or at any staging area on the Airport property. The safety representative shall have the project safety responsibilities as his or her exclusive responsibility and not have any other responsibilities regarding this project unless the Commissioner specifies otherwise in Part 1 of the Contract Documents. The safety representative must have the authority and the experience level to fulfill the duties stated in the "Chicago Airport Systems Construction Safety Manual".

- c. Although the Construction Manager and Commissioner will observe construction and give the Contractor opinions and suggestions about safety defects and deficiencies, the Construction Manager and Commissioner will not be responsible for any unsafe working conditions. The Construction Manager's or Commissioner's suggestions on safety will in no way relieve the Contractor of its responsibility for safety on the project. The Contractor has sole responsibility for safety.
- d. The Contractor must comply with the requirements of Regulations 29 CFR Part 1926 (Originally CFR Part 1518) - Safety and Health Regulations for Construction of the Williams-Steiger Occupational Safety and Health Act of 1970 (Federal, OSHA). Copies may be obtained from the Regional Administrator of the Department of Labor, Federal Office Building, and Chicago, Illinois.

The Contractor's attention is directed to the "Health and Safety Act" of the State of Illinois. The rules pursuant to this Act are on file with the Secretary of State of Illinois and are identical in every respect with the standards in effect under the Federal, OSHA, and law, pursuant to orders of the Illinois Industrial Commission. The Federal and State standards require that the Contractor provide reasonable protection to the lives, health, and safety of all persons employed under the Contract. Such act and rules and the applicable parts thereof will be considered as part of these specifications.

- e. The Contractor must comply with all local safety laws including, but not limited to, blasting or use of explosives, and those set forth in Title 15 of the Municipal Code of Chicago, Ch. 15-4, Art.5, and Ch. 15-20, Art.1.
  - f. The Contractor must take any precautions that may be necessary to render all portions of the Work secure in every respect or to decrease the liability of accidents from any cause, or to avoid contingencies which are liable to delay the completion of the Work. The Contractor will furnish and install, subject to the approval of the Commissioner, all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of engineers and inspectors during the performance of said Work.
  - g. The Contractor must keep on the site of the Work, completely equipped first aid kits readily accessible at all times. The Contractor will designate a person on each shift, acceptable to the Commissioner, to be in charge of first aid and will cause such person to receive proper instructions therein.
  - h. The Contractor must furnish and place, in all buildings connected with the Work, a sufficient number of fire extinguishers, of a type and capacity approved by the Illinois Inspection and Rating Bureau.
  - i. Only such materials and equipment as are necessary for the construction of the Work under this Contract, as determined by the Commissioner, will be placed, stored or allowed to occupy any such space at 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 and placed where directed by the Commissioner.
2. Fire Protection: Fire protection must comply with all fire regulations and with all specific regulations of the Commissioner and other City officials who have jurisdiction, and will include the following:
- a. An ample number of suitable, fully charged fire extinguishers will be provided as approved. Also provide water type fire extinguishers for combustible materials in case of fire prior to daily removal of debris from the site.
  - b. All tarpaulins or other protective coverings will be of approved flame retardant material.

- c. Not more than one (1) day's supply of flammable liquid including oil, gasoline, paint or solvent will be brought to the site at any one time. All 110 degree F., or below, flash point liquids will be confined to "U.L." approved safety cans. No open fires of any type will be permitted.
  - d. The Contractor must prohibit all lighting of fires about the premises and all smoking in restricted areas where posted with "NO SMOKING" signs and must use due diligence to see that such prohibition is enforced. "NO SMOKING" signs must be furnished and posted by the Contractor. Smoking is prohibited everywhere on the AOA.
  - e. No debris or waste materials, including hazardous materials, will be burned at the construction site.
  - f. During construction, all cutting or welding operations will be carried out with all precautions taken to prevent fires resulting from sparks or hot slag. Extreme care will be exercised to determine that such sparks or embers do not fall into any combustible materials, even if such material is stored on lower floors. Sheet metal windscreens will be provided around the lead-melting furnaces whether building is enclosed or not. Portable fire extinguishers will be provided at and below all locations where cutting or welding or melting operations are being performed or, if such operations are extensive, a hose from the stand pipe system or fire hydrant will be placed nearby.
  - g. All combustible material, including but not limited to, wood, crates, excelsior paper, rags or flammable solvents will not be allowed to accumulate, but will be removed to a safe location and disposed of immediately after they have served their purpose.
  - h. If there is a concentration of gas vapors at the Project site, the Contractor will be responsible for clearing the area, and notifying the Commissioner and the gas Utility Company. All operations in the area will be suspended until the source of such vapors has been located and corrected.
  - i. The Contractor will arrange for the installation of necessary fire protection lines and equipment as required by the Chicago Fire Department and as necessary to properly protect the building under construction. Permanent fire protection facilities may be used for this purpose as soon as they are installed, tested, and approved for use by the Commissioner in writing for temporary use.
  - j. Salamander heaters or similar forms of uncontrolled heaters will not be used except with the special written permission of the Commissioner and City fire marshal and then only when each salamander is maintained under constant supervision.
3. Environmental Compliance: As provided in Section C, "Compliance with Environmental Laws", below, in performing the Work under the Contract, the Contractor must comply with all Environmental Laws, including but not limited to those relating to preventing pollution of air, water, soil, and groundwater due to its construction and other operations, must eliminate excessive noise, and must otherwise conduct its operations in a manner protective of public health and safety. If the Contractor causes the release or threatened release of Hazardous Materials into the air, soil, water, or groundwater at the airport or exacerbates any existing environmental condition at the Airport, the removal of such Hazardous Materials and the remediation of any contamination must be performed in the manner and time frame determined by the Commissioner, and by applicable Environmental Laws, at the Contractor's sole expense.

The Contractor must also comply with the CDA Stormwater Pollution Prevention Plan (SWPPP), Spill Prevention Control & Countermeasure Program (SPCC), and the Best Management Practices Manual. These documents are meant to supplement existing federal, state, or local regulatory requirements with additional best practice environmental strategies and considerations. These documents are available on the CDA website:

4. Clean Up:
  - a. During the construction, the Contractor must keep the site of the Work and adjacent premises as free from material, debris, and rubbish as is practicable and when directed, will immediately remove same entirely when, in the opinion of the Commissioner, such material, debris, or rubbish constitutes a nuisance, a safety hazard, or is objectionable in any way to the public. Haul roads, streets, and public areas will be swept daily.
  - b. Contractor is solely responsible for and will assume all liability associated with off-site disposal of Hazardous Materials at a properly permitted disposal facility generated as a result of Contractor's construction activities.
  - c. Before Final Completion of the Project, the Contractor must remove from the site of the Work and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades and signs and will restore the site to the same general conditions that existed prior to the commencement of its operations. The cost of final cleaning up will not be paid for under any specific scheduled item but will be included in the prices bid for the various items or included in the Contract lump sum price as the case may be.
  - d. The Contractor must clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt and any other foreign materials deposited or accumulated on any portion of its Work, or existing Work, due to its operations.
5. Snow and Ice Removal: Contractor must remove snow and ice which may impair progress of Work, be detrimental to workers, or impair trucking to and from point of delivery at job site, all subject to no interference whatsoever to aircraft, to other operations at the airport and subject to whatever directions the Commissioner may give to the Contractor.
6. Glass Breakage: All glass broken or damaged during construction will be replaced by the Contractor or Subcontractor responsible for the breakage or damage. In the event responsibility cannot be determined, the Contractor will make all such replacements without additional cost to the City.
7. Sanitation.
  - a. The Contractor must enforce among its employees such regulations in regard to cleanliness and the disposal of garbage and wastes including Hazardous Materials as will be conducive to their health and tend to prevent the inception and spread of contagious and infectious disease among them and will provide an ample supply of suitable, pure drinking water and will take such means as the Commissioner may direct to effectively prevent the creation of a nuisance on any part of the site of the Work or adjacent streets or property.
  - b. Necessary sanitary conveniences for the use of the laborers on the Work, properly secluded from public observation, will be constructed and maintained by the Contractor in such manner and at such points as will be approved and their use will be strictly enforced. Whenever manholes have been used for sanitary purposes, they will be thoroughly flushed and cleaned when no longer needed.
  - c. The manner of disposing of waste will be such that all waste is legally disposed of at properly permitted facilities without creating a public nuisance or health hazard and in accordance with EPA, Illinois EPA and Illinois Department of Public Health Circular No. 815 or Educational Health Circular No. 4.001 and the City of Chicago Municipal Code.

- d. The Contractor must also comply with all rules and regulations of the Federal and State Governments and Chicago Health Department.

8. Public Convenience.

The Contractor will be held responsible for all damage or injury, even though barricades, signs, lights, reflectors and flagmen are furnished as herein specified.

- a. All hauling and operations of equipment and all other necessary operations under this Contract must be so conducted as to cause a minimum of noise, vibration and inconvenience to the normal activities of the occupants of property and buildings in the vicinity of the Work. Whenever the Commissioner determines that any type of operation constitutes a nuisance, the Contractor must, immediately, proceed to conduct its operations in an approved manner.
- b. The Contractor must, at all times, conduct the Work in such a manner as to insure the least obstruction to vehicular and pedestrian traffic. Normal vehicular and pedestrian traffic on all adjacent streets, bridges, overpass structures and ramps will be maintained at all times during the performance of the Work under this Contract. Whenever such obstruction or interference is unavoidable, attention is called to the necessity of obtaining permits from the appropriate municipal or public agency before proceeding with the Work. Wherever necessary, the Contractor, at its expense, must provide all temporary facilities that may be required to maintain vehicular and pedestrian traffic and access to all property.
- c. Whenever any part of a street is obstructed or closed to traffic, the Contractor must provide, erect, and maintain at its own cost and expense all of the approved barricades, signs, lights and reflectors necessary to provide safe and convenient public travel. The Contractor must also provide, at its expense, any flagmen that may be required for warning and directing traffic.
- d. The Commissioner may at any time require additional provisions if such are deemed necessary for public safety or convenience.

The Contractor will be held responsible for all damage or injury, even though barricades, signs, lights, reflectors and flagmen are furnished as herein specified.

C. Compliance with Environmental Laws.

- 1. The Contractor must comply with all Environmental Laws including without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of Hazardous Materials, special wastes or other contaminants into the environment and to the generation, use, storage, contaminants into the environment and to the generation, use, storage, transportation, or illegal disposal of solid wastes, Hazardous Materials, special wastes or other contaminants including, without limitation, the Comprehensive Environmental Response and Compensation and Liability Act (42 U.S.C. 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. 1801 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f), the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.), the Illinois Environmental Protection Act (Ill. Rev. Stat. Ch. 415 ILCS 5/1 through 5/56.6), and the Municipal Code of Chicago, each as amended or supplemented, and any analogous future or present local, state or Federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive regulating, relating to or imposing

liability or standards of conduct concerning any Hazardous Materials or by Federal government, any state or any political subdivision thereof, or any agency, court or body of the Federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions (collectively, "Environmental Laws").

2. If any Environmental Laws require the Contractor to file any notice or report of a release or threatened release of Hazardous Materials or special wastes on, under or about any premises used by Contractor to perform the services required hereunder, the Contractor must provide a copy of such report or notice to the Commissioner. In the event of a release or threatened release of Hazardous Materials, special waste or other contaminants into the environment or in the event any claim, demand, action or notice is made against the Contractor regarding the Contractor's failure or alleged failure to comply with any Environmental Laws, the Contractor will immediately notify the Commissioner and the City's Corporation Counsel in writing and will provide them with copies of any written claims, demands, notices or actions so made.
3. If the Contractor fails to comply with any Environmental Laws, the City may terminate this contract in accordance with the default provisions of this contract.
4. For purposes of this provision, the following definitions will apply:
  - a. "Hazardous Materials" means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCB's), chlorofluorocarbon (CFC) refrigerator gas, petroleum or crude oil or any fraction thereof, natural gas, source material, special nuclear materials; and by product materials regulated under the Atomic Energy Act (42 U.S.C. 2011, et seq.) pesticides regulated under the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. 136, et seq.), and any hazardous waste, toxic or dangerous substance or related material, including any material defined or treated as "hazardous substance", "hazardous waste", "toxic substance", or contaminant (or comparable term) under any of the Environmental Laws.
  - b. "Special Wastes" means those substances as defined in 415 ILCS 5/3.45, and as further referred to in Section 809.13 of 35 Illinois Code, Subtitle G. Ch. 1.

D. Environmental Permits.

1. The Contractor must show evidence of, and keep current throughout the term of this Contract, all waste hauling, special waste hauling, disposal permits and insurance certificates issued by the applicable Federal, State, City and other local governmental body and agency's Environmental Laws, including but not limited to, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Department of Transportation Regulations, the Hazardous Materials Transportation Act, the Clean Air Act, and the Clean Water Act, the Illinois Environmental Protection Act, the Municipal Code of the City of Chicago, currently in effect, and as amended during the course of this contract period.
2. When requested by the Chief Procurement Officer, the Contractor must submit copies of all required hauling permits as required by Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Chief Procurement Officer throughout the duration of this Contract. Non-compliance with this requirement may be cause for rejection of bid and/or termination of this Contract.

E. Disposal of Materials, Construction Debris, Soil and Waste.

1. The Contractor is responsible for the legal disposal of all materials, construction debris, soil and other waste items. Hauling and disposal by a subcontractor does not relieve the Contractor from the responsibility of legal disposal. Disposal of all materials, construction debris, soil, and other wastes will be at a disposal site that is properly licensed and

permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all applicable Environmental Laws, including but not limited to City of Chicago MCC 2-92-595 and Illinois EPA 35 IAC 1100.

2. The Contractor must provide the Commissioner or his designated representative with copies of all dump tickets, manifests, bills of lading, scale tickets, etc. When requested by the Chief Procurement Officer, the Contractor will provide copies of all permits and/or licenses for the transfer station and/or landfill they are proposing. In the event the transfer station and/or landfill proposed for use by the Contractor does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil, or other wastes, the Contractor will replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the City. If the Contractor is found disposing of materials, construction debris, soil or other wastes at a site which is not in compliance with all applicable laws, the Contractor will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site at no additional cost to the City.
3. The Contractor accepts responsibility for being in compliance with all applicable Environmental Laws and other applicable Federal, State, City and other local government and agency laws, ordinances, rules, regulations and codes currently in effect and as amended during the course of this contract.
4. The Contractor must notify the Commissioner within 24 hours of receipt, of any environmental problems, complaints, fines, citations, violations or issues, by any governmental body or regulatory agency against the contractor relating to the loading, hauling or disposal of materials, construction debris, soil and other wastes. The Contractor will provide evidence to the Commissioner that these problems and issues have been satisfactorily addressed.
5. The Contractor must supply notice of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of materials, construction debris, soil and other wastes under this contract in which Contractor is asked to participate.
6. The Contractor must provide periodic verification as requested by the Commissioner that all materials, construction debris, and other waste accepted by the Contractor, from the City of Chicago, has been disposed of in compliance with all Environmental Laws.
7. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

7-28-390	Dumping on public way – Violation – Penalty;
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;
11-4-1560	Screening requirements; and any other sections listed in Section 11-4-1600 (e) as it may be amended from time to time.
11-4-1905	Construction or Demolition Waste Recycling; and any other sections listed in Section 11-4-1600 (e) as it may be amended from time to time.

During the period while this Contract is executory, Contractor's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Contract, constitutes a breach of and an event of default under this Contract, for which the



opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Contract, at law or in equity.

8. This section does not limit the Contractor's and its Subcontractor's duty to comply with all applicable federal, state, county and municipal Environmental Laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Contract.
9. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this contract, and may further affect the Contractor's eligibility for future contract awards.

F. Equipment and Environmental Control During Transport.

1. The Contractor must haul materials, construction debris, soil and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer materials; construction debris, soil and other wastes will be designed to prevent spillage during the hauling operation. Contractor's equipment will fully comply with all City, State and Federal regulations, laws and ordinances pertaining to size, load weight, and safety. The City will not be liable for any violation committed on the part of the Contractor in the handling, hauling, disposal or transportation (by any method) of materials, construction debris, soil and other waste. The Contractor must fully comply with all applicable Environmental Laws, including but not limited to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Department of Transportation Regulations, the Hazardous Materials Transportation Act, the Clean Air Act, and the Clean Water Act, the Illinois Environmental Protection Act, the Municipal Code of the City of Chicago, currently in effect and as amended during the course of this contract period.

G. Environmental Records and Reports.

1. The Contractor must prepare and maintain proper, accurate and complete records of accounts of all transactions related to the operations of this contract, including, but not limited to the following:
  - a. Vehicle maintenance records.
  - b. Safety and accident reports.
  - c. IEPA manifests.
  - d. Disposal records, including disposal site used, date, truck number, and disposal weight.
  - e. Permit documentation and all other documentation and transactions pertaining to all environmental rules and regulations.

H. Ultimate Disposal Site.

1. The Contractor must at the time of submitting its bid, identify approved disposal site(s) or privately owned transfer station(s) to which he has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained by the operators.
2. Disposal sites submitted must be of sufficient capacity to insure acceptance of the volume of materials, construction debris, soil, and other wastes received for the period of this contract. The disposal site(s) must meet all applicable permitting, licensing and zoning requirements.
3. The Contractor must designate by name and location the disposal site(s) as supplemental information on the Proposal Page. Failure to identify disposal site(s) for materials, construction debris, soil and other wastes or to submit this information when requested by the Chief Procurement Officer may be cause to reject the bid as non-responsive.

4. When requested by the Chief Procurement Officer, the Contractor must submit copies of all contractual agreements, sanitary landfill permits and/or licenses for those disposal site(s) proposed by the Contractor.
- I. Open Dumping Prohibited.
    1. The removal of all recyclable materials and garbage, refuse or other waste material, including but not limited to, broken concrete, bricks, rock, paving asphalt and incidental debris generated from all construction or demolition activities performed under this contract, must be transported to a facility that is zoned and permitted to accept such material pursuant to Section 11-4 of the City of Chicago Municipal Code and all Environmental Laws.
  - J. Services and Use of Site.
    1. Work Area: Part Three of the Contract Documents may assign areas for the Contractor's Field Office staging areas and areas for material storage. After award of Contract, the Contractor may request assignment of a working area. If this assigned working area is not of sufficient size, the Contractor must secure other space away from the Project site at its own expense. The period of use of the assigned working area may not exceed the number of calendar days for completion of the Work as specified in Part One or until Final Completion of the Project.
    2. Temporary Services and Utilities.
      - a. General:
        - (1) The Contractor is responsible for arranging for and providing all general services and temporary facilities as specified herein and as required for the proper and expeditious prosecution of the Work. The Contractor must pay all costs for such general services and temporary facilities.
        - (2) Temporary connections for water, electricity, and heat (including installation, maintenance and removal of such facilities) will be at the Contractor's expense.
        - (3) The Contractor must pay the cost of all temporary utilities including, electricity, gas, water, and telephone during the construction period.
      - b. Water:
        - (1) The Contractor must provide temporary water connections as required for drinking and construction purposes.
        - (2) The Contractor will note that the Commissioner reserves the right to regulate the use of water, and may impose restriction on the use in the event water is being used carelessly by the Contractor.
        - (3) Water and facilities for obtaining water for sanitary purposes, drinking, mixing concrete and for all other purposes will be provided by and at the expense of the Contractor. The water must be obtained from the mains of the Chicago Water System, except as may be provided in the Detail Specifications. Except with special permission from the Commissioner and the Department of Water Management, connections for water will not be made to the City's fire hydrants.
      - c. Light and Power: The Contractor must furnish the electrical energy and must furnish and install all wiring, electrical services, lighting units, insulated supports for wiring and all other electrical equipment together with all other incidental and collateral Work

necessary for the furnishing of the temporary power and lighting facilities for the Work to be done under this Contract, all at no additional cost to the City.

3. Temporary Heating During Construction.

- a. The Contractor must provide temporary closures or enclosures for all exterior doors, windows, roof or other types of exterior openings as required to provide protection from the elements during construction. It is the Contractor's responsibility to keep water in pipes from freezing and to maintain temporary heat in areas where finish Work is being performed at not less than 50 F. Finish work includes, but is not limited to: masonry, plastering, painting, millwork, and other temperature sensitive work. Heating period will be from approximately October 1 to May 30 unless conditions warrant otherwise.
- b. The Contractor must furnish, install, operate and maintain all required temporary heating equipment, and will provide and pay all fuel costs. Oil fired or gas heating units will be self-contained units, which will be furnished, in sufficient number and adequate capacity to conform with the requirements for temporary heat stated above. Each oil-fired or gas-fired unit will be properly vented as required to dissipate noxious fumes and prevent discoloration of building construction. Temporary electrical connection will be provided by the Contractor.

4. Temporary Construction Facilities.

- a. General: Unless otherwise specified, the following temporary construction and temporary facilities must be provided and maintained by the Contractor throughout the construction period and remove same at the completion of the Work.
- b. Toilets: The Contractor must provide portable chemical toilet facilities at the site for all workers employed on the Project as soon as construction operations commence. Toilet facilities must be serviced twice weekly, which will include draining tank, refilling, disinfecting the interior of each toilet unit, and keeping each unit stocked with toilet paper. Toilet facilities must be maintained during the term of the construction period and removed upon completion of the Work.

5. Contractor's Field Office.

- a. When required by Part Three of the Contract, the Contractor must provide a temporary building or mobile type field office, for its own use, of such size and containing such equipment as its Contractor deems necessary to conduct the operations. The Field Office must be provided with a telephone for Contractor's superintendent and telephone for use by others during the entire period of construction.
- b. The Contractor's authorized agent must be present at its field office at all times while its Work is progress. Readily accessible copies of both the Contract Documents, Contract Modifications and the latest approved working drawings and Shop Drawings must be kept at this field office.
- c. When required by Part Three of the Contract, the Contractor must supply the field office, furnishings, equipment, supplies and vehicles specified in Part Three of the Contract for the City's field supervision staff.

6. Working Space.

- a. The Contractor shall provide, on the premises, working space for its use and for each of its Subcontractors requiring on-site working space. The Contractor must also provide sufficient space for benches, tools, material storage and for such other purposes as may be required to properly perform and expedite the Work. Allocation of such Work areas shall be approved by the Commissioner.

- b. The Contractor must maintain, throughout the construction period, all Work areas in a clean and orderly condition and take whatever precautions may be necessary adjacent to the Work. Where construction materials are to be stored or Work performed in working space outside a building, the Contractor must provide necessary protection for walks, pavement, etc. Any damage to Work due to improper protection must be cleaned, repaired, or replaced by the Contractor at no additional expense to the City.

7. Parking Restrictions.

- a. Except to the extent that the Commissioner has made parking available, the Contractor must, at all times, require its employees to park their automobiles in the customer parking lots at the airports or at non-airport locations.
- b. The Contractor's and Subcontractor's employees must not at any time park their automobiles, no matter how short the duration, in any drive, road, or any other location within the boundaries of the airports.
- c. The Commissioner may authorize parking at the Contractor's designated storage area if existing conditions permit.

8. Project Sign: A Project sign is to be erected by the Contractor, when required by Technical Specifications, at a location designated by the Commissioner. Upon project completion the sign must be removed by the Contractor. The Project sign will be constructed of treated exterior grade plywood; painted, installed and placed as directed by the Commissioner.

9. Heaters in temporary offices and sheds must be properly installed and precautions taken to protect combustible walls, floors, and roof.

K. Storage.

1. Storage of Materials.

- a. If it is necessary to store materials, they must be protected in such a manner as to insure the preservation of their quality and fitness for the Work. All stored materials will be inspected at the time of use in the Work even though they may have been inspected and approved before being placed in storage. The Contractor must store materials in the areas provided as working areas by the Contract Documents. If no areas are provided, or if the areas provided are insufficient, the space required will be provided by the Contractor at its expense. Upon completion of the Work, storage sites and working areas must be cleaned and restored to their original condition by the Contractor at its expense.
- b. All materials and equipment must be received at the Work undamaged. The Commissioner will have the right to reject any method of packing and shipping which, in the Commissioner's opinion, will not adequately protect the materials and equipment against damage while they are in transit or storage or which will damage existing structures.
- c. Only such materials and equipment as are necessary for the construction of the Work, as determined by the Commissioner, will be placed, stored, or allowed to occupy any space at the site of the Work. If gasoline, flammable oils, or other highly combustible materials are to be stored at the site, they will be stored in approved safety containers and placed where directed by the Commissioner. Compressed gas cylinders must also be properly secured and stored.

- d. All materials or plant used in the construction of the Work must be so placed as to allow free access to all fire hydrants, water valves, gas valves, manholes that are part of electric, telephone and telegraph conduit lines and all fire alarm and police call boxes in the vicinity.
  - e. No material or equipment may be stored or staged on the Aircraft Operations Area without written permission from the Commissioner. If allowed, the material and equipment must be stored and/or staged subject to the directions of the Commissioner.
2. Storage Sheds: The Contractor and each Subcontractor must provide suitable watertight storage sheds for their own use as required. The Contractor and each Subcontractor must be responsible and pay for extending electric services to their storage shed; however, such electrical Work will be performed by an electrical Subcontractor. Materials stored in the open will be arranged in an orderly manner and properly protected.
- L. Equipment and Falsework.
- 1. Equipment: All equipment owned or controlled by the Contractor, which is proposed to be used on the Work, must conform to the specifications for specific items of equipment. If not specified, equipment to be used on the Work is subject to the approval of the Commissioner under the provisions of the Section XIV.K.2, "Construction Procedure, Methods and Equipment."
  - 2. Welding:
    - a. No welding, flame cutting, or other operations involving use of flame, arcs, or sparking devices, will be allowed without adequate protection, subject to approval of the Commissioner.
    - b. All combustible or flammable material must be removed from immediate working area. If removal is impossible, all flammable or combustible materials will be protected with a fire blanket or suitable non-combustible shield to prevent sparks, flames, or hot metal from reaching flammable or combustible materials.
    - c. The Contractor must provide necessary personnel and equipment to control incipient fires resulting from welding, flame cutting, or other sources involving use of flame, arcs, or sparking devices.
    - d. All welders must be certified within the last eighteen months.
    - e. A Hot Work Permit, as listed in the Safety Manual must be displayed for all welding work.
  - 3. Temporary Stairs, Ladders and Equipment:
    - a. The Contractor must furnish and maintain all equipment such as temporary ladders, ramps, runways, hoists, scaffold, and similar items required for proper execution of Work. All such apparatus, equipment and construction will meet all requirements of federal, state and local laws concerning the safety and protection of employees. Also, any and all rules, regulations and directions of the CDA, applicable thereto, and all other authorities having jurisdiction over same will be followed.
    - b. No hoist, scaffolding or other equipment may be erected at such location as will interfere with or affect general construction or progress of other trades.
    - c. Hoists, scaffolding or other equipment must be located at sufficient distance from exterior walls to prevent staining or marring of any permanent Work.

- d. All suspended scaffolding and staging must be lowered to ground level at the end of each workday.

4. Temporary Barricades and Enclosures:

- a. The Contractor must provide temporary barricades or enclosures as required during the progress of the Work to protect personnel and separate work areas from the balance of building and other areas.
- b. Temporary work screens or enclosures must be provided, erected and maintained by the Contractor, to separate pedestrian or vehicular traffic and building areas free of noise, debris, dirt, etc. resulting from this Work, including provisions of all required protection for passers by and building occupants against all danger of injury, as approved by the Commissioner.
- c. All protective measures must be erected and maintained in accordance with the requirements of City, State and Federal authorities and as directed by the Commissioner, inclusive of all night and warning lighting as hereinafter required under Section XV.B, "Airport Operations."

M. Cooperation Among Contractors.

- 1. Unless otherwise provided in the General Conditions, if separate contracts are let for Work within or adjacent to the Project site as may further be detailed in the Contract Documents, each contractor must conduct its Work so as not to interfere with or hinder the progress of completion of the Work being performed by other contractors.
- 2. Each contractor involved will assume all liability, financial or otherwise, in connection with its 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 by the Contractor because of the presence and operations of other contractors working within the limits of the same improvement. Each contractor must assume all responsibility for all Work not completed or accepted because of the presence and operations of other contractors.
- 3. The Contractor must arrange its Work and placement and disposal of the materials being used so as not to interfere with the operations of other contractors within or adjacent to the limits of the project site. The Contractor must join its Work with that of others in an acceptable manner and will perform it in proper sequence to that of others.

N. Injuries To Contractor's Employees.

Contractor agrees to assume entire liability for all personal injury claims suffered by its own employees asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon Worker's Compensation Act, court interpretations of said Act or otherwise; and agrees to indemnify and defend the City and its design professionals and their agents, employees and consultants (the "Indemnities") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnities may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnities' own negligence. Contractor further agrees to require all of its subcontractors to agree to this contract provision.

**END OF XIV**

## **XV. AIRPORT SECURITY AND OPERATIONS**

### **A. Airport Security and Badging.**

1. This Agreement is expressly subject to 49 U.S.C. Chapter 449, Security, the provisions of which, and all rules and regulations promulgated thereunder, are hereby incorporated by reference. Contractor must comply, and must cause its subcontractors, guests and invitees to comply, with all such rules and regulations as they apply to them and any other applicable rules and regulations governing the conduct and operation of the City's Airports which may be promulgated from time to time by the Transportation Security Administration, the FAA or the Commissioner of Aviation.

If Contractor, or any Subcontractor or individual employed by Contractor, in the performance of this Agreement, has (i) unescorted access or regular escorted access to aircraft located on or at the City's Airport; (ii) unescorted access or regular escorted access to secured areas of the Airport, or (iii) capability to allow others to have unescorted access to secured areas, Contractor is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such investigations (including the submission of fingerprints to the City to conduct criminal history record checks) as the Federal Aviation Administration ("FAA"), the Transportation Security Administration ("TSA") and the City may consider necessary. All such individuals that pass the requisite investigation will be required to participate in a security awareness program and will be issued an identification badge that must be visibly displayed at all times while on the airfield or other secured areas of the airport, consistent with federal requirements and Aviation regulations. They will further be required to report suspected security violations in accordance with rules and regulations promulgated by the Secretary of the United States Department of Transportation, by the Under Secretary of the TSA, and by the City.

Failure to comply with applicable rules and regulations may result in administrative actions and/or judicial prosecution. The Contractor will be jointly liable for any fines imposed for violation of rules and regulations by its employees and those of its Subcontractors, guests, and invitees.

2. The Contractor must apply for a CDA Airport Security Badge for each of its employees, Subcontractors, material suppliers, invitees, consultants or other persons the Contractor employs during the progress of the Work. 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 CDA to receive an Airport Security Badge, which may include authorization to drive on the Aircraft Operations Areas (AOA). However, if the person does not go through security to the airside more often than seven (7) days, over the duration of the project, that person may be escorted by an individual with an airport security badge.
3. 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 CDA to receive an Airport Security Badge, which may include authorization to drive on the AOA. Prior to issuance of the Airport Security Badge, the employee must complete the TSA required training class.

The Federal Aviation Administration, TSA, and City requires employees of Contractors 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.

Employees without proper credentials will be removed from the AOA or any secured area of the airport.

4. Airfield Access Vehicle Permits: In order for the Contractor to be issued Airfield Access Vehicle Permits for operation of a vehicle on the AOA, the Contractor must submit a "Company Vehicle Access Form – AIRFIELD." The Contractor is responsible for requesting and completing these forms for all vehicles to be used on the project site.

Vehicles without proper credentials will be removed from the AOA or any secured area of the airport.

5. The following rules related to Security Badges, Vehicle Permits, Driver's Licenses must be adhered to:
  - a. 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.
  - b. Contractor must ensure that its employees needing an ORD or MDW 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 (contractor responsibility).
    - ii. Finger printing (completed at ORD or MDW).
    - iii. On all Airside Projects: During the badging process, but prior to receiving ORD/MDW ID badge, all employees shall complete Part 303 (2 hours) training, the cost for which is incidental to the Contract.
      - a. Annual 303 Training. This training is required for all construction personnel that will be issued a ORD or MDW identification badge, except when issued a red badge. If an employee is issued a green badge, with or without driving privileges (yellow stripe), this training must be completed prior to application for the initial badge and repeated annually prior to badge renewal. This requirement applies to all Contractors and Sub-Contractors.
  - iv. Vehicle driver testing (completed at ORD and/or MDW)
  - c. 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 CDA. 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.
  - d. All vehicles and mobile construction equipment which are to be in use on the AOA for more than seven (7) days over the duration of the project, must have an Airfield Access Vehicle Permit affixed to the vehicle at all times while operating on the Airport. All vehicles and construction equipment are subject to search as they enter the AOA or any time thereafter. In addition, all required City stickers and State Vehicle Inspection stickers must be valid.
  - e. Escorted vehicles or equipment that will be in use on the AOA for less than seven (7) days over the duration of the Project, that do not have an Airfield Access Vehicle Permit are required by the TSA to be inspected as they enter the AOA.
6. Access to the Work sites will be as shown or designated on the Contract Document drawings. The Contractor will use only designated access gates, service roads or haul roads while on Airport property.
7. Whenever the Contractor receives permission to enter airport property in areas, which are exit/entering points, not secured by Airport Security police, the Contractor 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. The locks will be provided by Airport Security. Failure to provide the necessary security will result in an immediate closure by Airport personnel of the point of access. No extension of time will be allowed for the execution of Work if the Contractor is required to gain access through Airport Security exit/entry points.

8. The Commissioner will determine areas in which the Contractor may stockpile materials, and park equipment, or vehicles, and any conditions related thereto.
9. Damage to any security fencing, gates, or alarms caused by the Contractor must be manned by a bonded security guard of the Contractor until restored and must be restored to its original condition within an eight (8) hour period from the time of notice given by the Commissioner.
10. 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 Contractor 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.
11. Weapons, alcohol, illegal drugs, or other contraband are not allowed on the Airport.
12. All Contractor'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 Contractor by the Commissioner, as required. Return of all Permits and Badges to the Commissioner after completion of the Project is the responsibility of the Contractor. Final Contract Payment will not be made until all Permits and Badges issued have been returned to Aviation Airport Security at the Airport.
13. The Contractor must place signage that identifies the Project, 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.
14. Certified Flagger Training: Under the requirements of Advisory Circular (AC) 150-5370-2F, all personnel flagging on an airport must be familiar with the specific requirements and limitations of the construction project and taxiway crossing areas. All Contractor flaggers are required to attend the Airport flagger training program.

B. Airport Operations.

1. 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 Contractor.
2. The Contractor'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 Contractor's operations.
3. The Contractor must cooperate fully with the CDA Airport Operations 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.

4. Prior to start of the Project, the Construction Manager will provide specific requirements and/or instructions, which are applicable to the particular building site areas.
  - a. Federal Aviation Regulations (FAR) 139 Training (303 Training) is available through the CDA. No employee of Contractor, or Subcontractors, or Vendors shall be permitted to enter Airfield Operations Area (AOA) lacking successful completion of training for any reason.
5. The Contractor must not permit or allow its employees, subcontractors, material suppliers, invitees or any other persons over whom the Contractor has control to enter or remain upon, or to bring or permit any equipment or materials to remain upon, any part of the runways, taxi-ways, vehicular roadways, aprons, and passenger right-of-ways if any hazard to aircraft or to airport maintenance and operation, on or off the ground, would be created in the opinion of either the Commissioner or the CDA Airport Operations.
6. The Contractor 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. No personal vehicles will be permitted within the AOA. The Contractor will be responsible for the construction, repair, and/or maintenance of all haul roads to and from the designated entrance to various Work sites.
7. All equipment and materials on the AOA must be marked with red obstruction lights, of a type acceptable to the Commissioner and Airport Operations. All obstruction lights will be kept on continuously, twenty-four hours a day, seven days a week.
8. Each vehicle and piece of equipment on the AOA must have a yellow rotating beacon or strobe light, in operation at all times, mounted on the roof.
9. The Contractor, through the Commissioner and City Aviation and FAA Airport Operations Personnel, must be in constant communications to insure safe operations on the airfield. The Contractor will notify the Commissioner forty-eight (48) hours prior to requesting the closing of any area so that the Airport Operations Personnel can properly coordinate the activities of the Airport and the Contractor.
10. 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, staged, or operated within the object free area (OFA) of an open taxiway. Work is permitted in the object free area of a runway while the runway is open, however, all equipment and material must be moved or relocated outside the OFA at the completion of the work day. Excavations are permitted within the OFA but all stockpiles must be removed. 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.
11. Extreme care must be taken when locating existing underground utilities. Contractor shall properly complete FAA Locate Request forms, submit them to the FAA Technical Operations office and simultaneously transmit a copy to the Construction Manager. Contractor shall designate an on-site person to monitor utility locating activities. Hand excavation and appropriate equipment shall be utilized wherever and whenever appropriate. DIGGER, JULIE, FAA and AGI shall be consulted to insure that utility locations are correctly marked.
12. The Contractor must maintain existing utilities in operation at all times except when specific permission is given by the Commissioner to shut down such utilities for the purpose of making connections thereto. When such utility service must be taken out of operation, the Contractor will notify the Commissioner at least seventy-two (72) hours 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 Contractor 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.

13. The Contractor 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.
14. Any cable or other existing utility lines that is damaged during the performance of this Contract must be repaired immediately by the Contractor, under the Commissioner's direction and at the Contractor's expense. During the period of time that the above types of cables or utilities are out of service due to the Contractor's operations, all Work must be suspended unless otherwise directed by the Commissioner. The Commissioner may order, in writing, the Contractor to halt all operations until service is restored. The Contractor 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.
15. Open trenches and excavations at the construction site must be prominently marked with barricades and lighted with flashing or steady burning red 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.
16. The Contractor 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 360 degree visibility with flashing red lights.
17. All the Work under this Contract is in restricted areas. The Contractor cannot cross any active runways or taxiways to deliver materials or workers without escorts and expressed permission of the Commissioner. The Contractor'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 Contractor must cooperate with Airport authorities to keep the Airport in operation.
18. No requirements of this Contract with respect to precautions required or omitted will be deemed to limit or impair any obligations assumed by the Contractor under or in connection with this Contract. The Contractor 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.
19. Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor and all subcontractors, material suppliers, laborers, invitees and all other persons under the control of the Contractor must immediately comply, strictly, with any and all rules, regulations and directions which the Commissioner from time to time, issues during the life of the Contract with regard to safety, security, maintenance, and operations of the Airport.
20. Contractor must use "Airport Barricades" as shown on the Contract Drawings to prevent Aircraft from entering construction areas.

21. 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 outside the object free area for all open runways and taxiways. The Contractor must lower any cranes or booms when notified by Airport Operations personnel.
22. 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 over City streets 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.
23. The Contractor 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.
24. It is important that all contractors and sub-contractors are familiar with and knowledgeable of the rules, regulations, and procedures of the Chicago Department of Aviation (CDA) Spill Prevention and Control Program (SPCP). These procedures apply to all personnel working on the project. All spills, including but not limited to: fuel, oil, deicing chemicals, and solvents, regardless of volume, must be reported to the O'Hare Communication Center (OCC) and O'Hare Airport Operations. The OCC will dispatch the Chicago Fire Department (CFD) to determine the severity of the spill, assist with spill containment, cleanup, and/or oversight if necessary. The CFD will issue the official volume of product released for the responsible party's use in notifying the appropriate agencies, if required.

The Contractor will take all necessary precautions to prevent spilled fluids from reaching any surrounding sewers or waterways if it can be done without harm to any personnel. Any spill must be surrounded immediately with approved containment materials, the site secured, and the OCC contacted.

All personnel shall handle hazardous materials according to the guidelines as defined by the product Safety Data Sheets (SDS), formerly referred to as MSD sheets. Extra attention must be paid during all fueling operations.

Any person that causes or witnesses a spill anywhere on the airfield must first report it to the OCC. All contractors are required to have clean up and spill kits on site at all times when equipment is in use. Kits are to be of adequate size to handle fuel or oil spills for the size and amount of equipment in use on the project at any specific time. The Contractor must develop and submit a spill prevention and control plan and incorporate the procedures into the project-specific Safety Plan Compliance Document (SPCD).

25. All runway safety areas are to remain clear of all personnel and equipment while the runway is open and available for use. NO WORK SHALL TAKE PLACE IN THE RSA AND TSA UNLESS THE RUNWAY IS CLOSED TO AIR TRAFFIC OPERATIONS.
26. Work is permitted in the runway and taxiway object free area. However, at the completion of each work day, no stockpiles, material, or equipment are permitted within the Runway Object Free Area (ROFA). Excavations are allowed provided they are barricaded and protected to a level approved by the Commissioner.
27. All excavation will be protected with snow fence or equivalent and barricades with red 360 degree visible lights.
28. Vehicles, equipment, material and stockpiles allowed to remain outside the ROFA will not penetrate Federal Aviation Regulations (FAR) Part 77 imaginary surfaces (particular, but not limited to the Primary Surface and Transition Slope).

C. Construction Notices to Federal Aviation Administration.

1. The CDA will submit a preliminary Federal Aviation Administration Form 7460-1.
2. The Contractor must cooperate with the CDA 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.
3. The Contractor 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.
4. The CDA 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.
5. Upon receipt of the Notice of Proceed, it is the Contractor'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 Contractor until it is in receipt of the foregoing documents unless otherwise allowed by the Commissioner.
6. In addition to the 7460 application, the CDA will submit a Construction Safety Phasing Plan (CSPP) for the project. The Contractor is required to review the CSPP and submit a Safety Plan Compliance Document (SPCD). Work within the AOA is not permitted to begin until the SPCD has been reviewed and approved by CDA.

D. Confidentiality of Project Data.

Unless agreed otherwise by the Commissioner in writing, all Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to or by Contractor in connection with this Contract (collectively, "Project Data") are property of the City and are confidential. Contractor agrees that, except as specifically authorized by the Commissioner in writing or as may be required by law, Project Data will be made available only to the Commissioner, his designees, and, on a need-to-know basis, Contractor's employees, Subcontractors, material suppliers and consultants. Contractor acknowledges that Project Data may contain information vital to the security of the airport ("Airport Security Data"). If Contractor fails to safeguard the confidentiality of Airport Security Data, Contractor is liable for the reasonable costs of actions taken by the City, the airlines, the Federal Aviation Administration ("FAA"), or the Transportation Security Administration ("TSA") that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements, procurement and installation of security devices, and posting of guards. All Subcontracts or purchase orders entered into by the Contractor, with parties providing material, labor or services to complete the Work, must contain the language of this section. If the Contractor fails to incorporate the required language in all Subcontracts or purchase orders, the provisions of this section are deemed incorporated in all Subcontracts or purchase orders.

E. Confidentiality of Airport Security Data

Contractor acknowledges that information vital to the security of the airport ("Airport Security Data"), including but not limited to Sensitive Security Information as defined by 49 CFR Part 1520, may be prepared, assembled, encountered by, or provided to Contractor in connection with this Contract. Contractor has an ongoing duty to protect confidential information, including but not limited to any Airport Security Data. If Contractor fails to safeguard the confidentiality of Airport Security Data, Contractor is liable for the reasonable costs of actions taken by the City, the airlines, the Federal Aviation Administration ("FAA"), or the Transportation Security Administration ("TSA") that the applicable entity, in its sole discretion, determines to be necessary as a result, including without limitation the design and construction of improvements,

procurement and installation of security devices, and posting of guards. All Subcontracts or purchase orders entered into by the Contractor, with parties providing material, labor or services in relationship to this Contract, must contain the language of this section. If the Contractor fails to incorporate the required language in all Subcontracts or purchase orders, the provisions of this section are deemed incorporated in all Subcontracts or purchase orders.

**END OF XV**

## **XVI. INSURANCE, INDEMNITY AND BONDS**

### **A. Indemnity.**

1. The Contractor agrees to protect, defend, indemnify, and hold the City, the Construction Manager, and their respective officers, officials, representatives, and employees (hereafter "the Indemnified Parties"), free and harmless from and against any and all claims, damages, demands, injury or death, in consequence of the granting of this Contract or arising out of or being in any way connected with the Contractor's performance under this Contract except as otherwise provided in 740 ILCS 35. The indemnification provided herein will be effective to the maximum extent permitted by applicable law. This indemnity extends to all legal costs including without limitation: attorney fees, costs, liens, judgments, settlements, penalties, professional fees, or other expenses incurred by the City, including but not limited to, fines and penalties imposed by public bodies and the reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section will survive the expiration or termination of this Contract.

To the extent permissible by law, Contractor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any losses, including any claim by an employee of Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq or any other law or judicial decision (such as, *Koteci 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 Pension Code.

2. The Contractor 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 Contractor even though the claimant may allege that the Indemnified Parties were in charge of the Work or allege negligence on the part of the Indemnified Parties. The City will have the right, at its sole option, to participate in the defense of any such suit, without relieving the Contractor of its obligations hereunder.
3. "Injury" or "damage" as these words are used in this section will be construed to include, but shall not be limited to, injury or damage consequent upon the failure of or use or misuse by Contractor, its subcontractors, agents, servants, or employees, of any scaffolding, hoist cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not the same be owned, furnished, or loaned by the indemnified Parties.
4. The Contractor will promptly provide, or cause to be provided, to the Commissioner and City Corporation Counsel copies of such notices as Contractor may receive of any claims, actions, or suits as may be given or filed in connection with the Contractor's performance or the performance of any Subcontractor and for which the Indemnified Parties are entitled to indemnification hereunder and to give the Indemnified Parties authority, information, and assistance for the defense of any claim or action.

### **B. Performance and Labor & Material Payment Bonds.**

1. The Contractor will, within five (5) calendar days of receipt of written notice from the City, deliver to the Chief Procurement Officer a Performance and Payment Bond in the amount of 100% of the Contract value. Such bond shall comply with the provisions of 30 ILCS 550/1 et seq., as amended, and of Chapter 2, Section 2-92-030 of the Municipal Code of Chicago, as amended. The surety or sureties issuing the bond must be acceptable to the City Comptroller and the bond must be in the form attached to Part One. The surety for the bond must appear on the listing of sureties approved by the U.S. Department of Treasury in its Circular 570 and shall be a Best's Key Rating Guide of "B+", Class XI, or greater. The surety must have bonding capacity per Circular 570 equal to or in excess of the Contract Price without need for reinsurance. The bond shall remain in effect for the

warranty period required by the Contract. Contractor may not change its surety without prior written consent of the Chief Procurement Officer

2. If at any time the surety or sureties, or any one of them, upon such bond become insolvent, or shall be in the opinion of the Chief Procurement Officer be unsatisfactory or unable to respond in damages in case of liability on such bond, the Chief Procurement Officer will notify the Contractor and direct that a satisfactory surety or sureties be provided forthwith.
3. No payment shall be made on account of Work done by the Contractor until satisfactory sureties have been provided as directed. In case of neglect, failure, or refusal of the Contractor to provide satisfactory sureties when so directed within ten (10) days after such notification, the Chief Procurement Officer may declare this Contract forfeited, but such forfeiture shall not release the Contractor or its surety or sureties from any liability which may have accrued prior to, on or after the date of forfeiture.

C. Insurance.

The Contractor must procure and maintain at all times, at Contractor's own expense, until Final Acceptance of the Work, during the warranty period, and during the time period following final acceptance, if Contractor is required to return and perform additional work for any reason, the types of insurance specified in Part One of the Contract Documents, with insurance companies authorized to do business in the State of Illinois covering all operations under this Contract, whether performed by the Contractor or by Subcontractors. If the Contractor returns to do any Work on the Project after final acceptance, including Warranty or any other repair work, the Contractor and any Subcontractors must procure the insurance coverages required by Part One of the Contract, and provide certificates of insurance for the coverages to the Commissioner, prior to beginning the work. Upon written request by the Commissioner, the Contractor will allow the Commissioner to review and copy any original insurance policies that the Contractor is obligated to maintain under this Contract.

1. The Contractor hereby waives any and every claim for recovery from the City for any and all injuries and losses arising under this Contract or in any way related to the Work, including but not limited to any claim for personal injury loss of or damage to the Work or to the contents thereof, which injury, loss, or damage is covered or should be covered pursuant to the insurance requirement of this Contract. As this waiver will preclude the assignment of any claim by subrogation (or otherwise) to an insurance company (or any other person), the Contractor agrees to give each insurance company which has issued, or in the future may issue, its policies of insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. The Contractor must require each Subcontractor to include similar waivers of subrogation in favor of the City.
2. The City Risk Management Department reserves the right to change, modify, or delete these requirements, including without limitation the right to request that the Contractor provide additional types of insurance.

**END OF XVI**



## **XVII. CLAIMS AND DISPUTES**

### **A) Claims.**

- a) This provision of the Contract applies to Change Claims under Article X and all other claims made under the Contract (collectively, "Claims").
- b) Any claim made by the Contractor regarding the Project must be made in accordance with the requirements stated below.
  1. The Contractor expressly consents to both the time requirements and notice content requirements for making a Claim or Dispute under this Section XVII. The Contractor acknowledges that the notice requirements set forth in this Section XVII will be strictly enforced and agrees that any failure on the part of the Contractor to provide notice strictly in accordance with the requirements of this Section XVII will constitute a waiver of the Contractor's right to make a Claim or submit a Dispute to the Chief Procurement Officer. The Contractor further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section XVII will not be subject to or diminished by any claim on the part of the Contractor that the Commissioner or Chief Procurement Officer 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.
  2. The Contractor must notify in writing the Construction Manager of any Claim of site conditions differing materially from those indicated in the Contract documents as required by Article III.
  3. The Contractor must provide a Notice of Claim, in writing, to the Construction Manager of any Change Claim as required by Section X.
  4. The Contractor must provide Notice of Claim in writing to the Construction Manager of any claim related to time as required by Article VIII.
  5. The Contractor must provide a "Notice of Claim" to the Construction Manager within ten (10) days of being notified by the Construction Manager that a payment deduction will be made for placement of asphalt or concrete, based on the percent within limits calculation in the Technical Specifications if the Contractor does not agree to the payment deduction.
  6. The Contractor must provide notice in writing to the Construction Manager of any other Claim that may be made, within five (5) days after starting the work that is affected by the Claim. The Notice of Claim 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.
  7. If the Contractor and Construction Manager are unable to agree on the adjustment of Contract price and/or Contract Completion Date in connection with a Notice of Claim, the Contractor must, within fifteen (15) days of completing the related work, provide written notice to the Construction Manager of the amount of adjustment in Contract Price and/or Substantial Completion Date sought by the Contractor and the contractual and factual basis for each. The Contractor will also designate this document "Notice of Claim."
  8. The Construction Manager will, within thirty (30) days from the date of receipt of the Notice of Claim, respond by: requesting a meeting with the Contractor; making a written request for additional information from the Contractor including but not limited to a general statement of the basis for the Notice of Claim, the facts underlying the Notice of Claim, the notice to the Construction Manager of the event that gave rise to

the Notice of Claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the Notice of Claim; taking other action to attempt to resolve the Notice of Claim; and/or advising the Contractor in writing that it should file a Claim with the Commissioner. Any steps taken by the Construction Manager to resolve the Notice of Claim will not exceed sixty (60) days from receipt of the Notice of Claim unless the Contractor agrees to an additional amount of time in writing. The Contractor and Construction Manager may agree on a proposed adjustment of Contract Price and/or Contract time 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 X.D.

9. If the Notice of Claim cannot be resolved between the Contractor and the Construction Manager within the time frame stated in Section X.G.3 for a Notice of Claim for a Change Claim or Section XVII.A.2.g for all other Notices of Claim, the Contractor must file a Claim with the Commissioner within ten (10) days of being advised to do so by the Construction Manager.
10. The Claim will include: a general statement of the basis for the Claim, all the facts underlying the Claim, of copy of the Notice of Claim to the Construction Manager of the event that gave rise to the Claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the Claim. The claim must be certified by the Contractor. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement 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.
11. The Claim must be sent by the Contractor to the Commissioner and copied to the Construction Manager.
12. The Commissioner has fifteen (15) days from receipt of the Claim to render a written "final decision of the Commissioner" stating the Commissioner's factual and contractual basis for the decision. However, the Commissioner may take an additional period, not to exceed ten (10) days, to render the "final decision". If the Commissioner does not render a "Final Decision of the Commissioner" within the prescribed time frame, then the claim shall be deemed denied by the Commissioner.
13. After receiving the Commissioner's final decision, the Contractor must accept the final decision of the Commissioner or file a Dispute with the Chief Procurement Officer within thirty (30) days in accordance with Section XVII.B, "Disputes".
14. If the Contractor accepts a final decision of the Commissioner which includes an adjustment in Contract Price and/or Contract Completion Date, it is subject to execution of a Contract Modification in accordance with Section X.D.
15. If the Contractor does not accept a final decision of the Commissioner and fails to file a Dispute with the Chief Procurement Officer within thirty (30) days, this will constitute a waiver of the claim and dispute. In the event of such waiver, the Commissioner may file a Dispute, pursuant to Section XVII.B, with the Chief Procurement Officer seeking a final decision as to the Claim.

B) Disputes.

- a) Contractor's Request: In the event of any dispute between the Contractor and the Commissioner which the Contractor and the Commissioner have attempted, but been unable, to resolve including without limitation changes, time extensions, claims, allowable costs or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract, a request for resolution must be submitted to the City Chief Procurement Officer by the Contractor for final determination; however, the default or termination of the Contractor are not matters that may be disputed under this provision of the Contract. The Contractor's failure to submit the dispute within thirty (30) days of final decision of the Commissioner is a waiver of the dispute. The Chief Procurement Officer may consider issues of Contract interpretation in connection with decisions to be made in resolving disputes.
- b) Request Requirements: Requests for resolution of disputes must be made by the Contractor in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Contractor and Commissioner; 3) the facts underlying the dispute; 4) reference to the applicable provision of the Contract 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 Contractor believes that prior to rendering a final decision, the Chief Procurement Officer should meet with the Contractor, Commissioner's representative 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 Construction Manager on the same day it is given to the Chief Procurement Officer. In addition, any correspondence that relates to the Dispute, which the Contractor provides to the Chief Procurement Officer, must be copied to the Commissioner and Construction Manager. The Commissioner shall have thirty (30) days to respond in writing to the Contractor's submission by supplementing the Contractor's submission or to provide its own submission to the Chief Procurement Officer and Contractor. However, the Commissioner may request and the Chief Procurement Officer may allow an additional period of time to respond. Failure by the Commissioner 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 Chief Procurement Officer's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Chief Procurement Officer.
- c) Chief Procurement Officer's Decision: The Chief Procurement Officer's final decision shall be rendered in writing no more than thirty-five (35) days after receipt of the response of the Commissioner was filed or was due unless the Chief Procurement Officer notifies the Contractor and Commissioner before the end of the thirty-five (35) day period that an additional period, not to exceed thirty (30) days, is needed for the Chief Procurement Officer to respond. The Chief Procurement Officer'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.
- d) Implementation of Decision: The Chief Procurement Officer'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 Contractor if the Contractor refuses to sign the Contract Modification.
- e) Contractor's Remedy: If either the Contractor or Commissioner does not agree with the decision of the Chief Procurement Officer, 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 Chief Procurement Officer's decision, all right to seek judicial review is waived.

- f) Contractor's Performance of Work: The Contractor may not withhold performance of and must prosecute any Work required by the Commissioner during the dispute resolution period, including judicial resolution. The Contractor must prosecute all of its Work including any disputed Work with the same diligence and effort as if no dispute existed. The Chief Procurement Officer's written determination must be complied with pending final resolution, including judicial resolution of the dispute. Neither the Chief Procurement Officer's determination, nor the actions of the Contractor or the Commissioner 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.
- g) Administrative Appeal of Dispute: The Contractor must follow the procedures set out in this Article XVII, "Disputes and Claims", and receive the Chief Procurement Officer's final decision as a condition precedent to filing a judicial review of the decision.

**END OF XVII**

## **XVIII. EVENTS OF DEFAULT AND TERMINATION**

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

The Commissioner may notify and recommend to the Chief Procurement Officer that in the Commissioner's opinion the Contractor has committed an event of default. The Chief Procurement Officer may, at his or her sole discretion, exercise the right to send the Contractor notice under paragraph C.1 or C.2 of this section.

### **B. Events of Default.**

The Contractor's failure to perform any of its obligations under the Contract, including but not limited to the following, are events of default:

1. Failure to begin the Work at the time specified.
2. Failure to perform the Work with sufficient workers and equipment or with sufficient materials to ensure the completion of Work or any part of the Work within the time specified by the Contract.
3. Failure to perform in accordance with the Contract Documents.
4. Failure to remove materials, repair, or promptly replace Work that was rejected as defective or unsuitable.
5. Unauthorized discontinuance of the Work.
6. Interruption or delay of Work for reasons within Contractor's control, including, but not limited to, labor unrest or disputes.
7. Insolvency, bankruptcy, or assignment for the benefit of creditors that negatively impacts Contractor's ability to pay Subcontractors or perform the Work.
8. Failure to pay Subcontractors or material suppliers.
9. Failure to carry on the Work in a manner acceptable to the Commissioner or in a manner that complies with any laws applicable to the performance of the Work.
10. Failure to comply with federal, state, local, or Airport safety and security requirements, including but not limited to an approved Project safety program.
11. Failure to update its Economic Disclosure Statement to reflect any changes in information, including but not limited to changes in ownership, and to provide it to the City.
12. Use of a Subcontractor without the Chief Procurement Officer's approval.
13. Failure to comply with any other term of this Contract in any material respect.
14. A default by Contractor or Affiliate under any other City contract.
15. The Contractor's failure to be licensed as a "General Contractor" as required by Chapter 4-36 of the Chicago Municipal Code, at all times throughout the term of the Contract or Contractor's loss of its general license.
16. 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.

17. Any violation of the Municipal Code of the City of Chicago, whether or not in connection with the Contract,
18. Failure to comply with any other term of this Contract that states an event of default.

C. Notices.

If there is an event of default the Chief Procurement Officer, in his or her sole discretion, may send the Contractor notice under either subparagraph C.1 or C.2.

1. Contractor's Notification of Termination for Default: If there is an event of default as defined in Paragraph B., the Chief Procurement Officer, at his or her sole discretion, may notify the Contractor in writing that the Contractor is terminated. The Chief Procurement Officer's decision and declaration of default shall be final and effective. Written notification of the default and termination of the Contract shall be provided to the Contractor and its surety by the Chief Procurement Officer.
2. Notice and Cure: In the event the Chief Procurement Officer gives the Contractor notice in writing of actions constituting default, under this Section XVIII.C, the Contractor 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 Contractor 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 Contractor and surety by the Chief Procurement Officer. The failure of the Chief Procurement Officer to default the Contractor within ten (10) days does not waive the City's right to terminate the Contract pursuant to the cure notice.

D. Remedies.

Upon an event of default as defined in Section XVIII.B, the City may invoke any or all of the following remedies:

1. The right of set off against any payments due or to become due to the Contractor on this Contract or any other contract with the City.
2. The right to take over and complete the Work, or any part thereof, either directly or through others and to hold the Contractor liable for any amounts paid for such Work above those amounts that the City would have paid Contractor for that same Work.
3. The City may use the Contractor's Subcontractors, material and equipment to complete the Work. Upon the City's notification to the Contractor that it intends to invoke this remedy, any and all rights that the Contractor may have in or under its subcontracts must be assigned to the City based upon the collateral assignment required by General Conditions section V.C. The sole obligation accepted by the City under such Subcontracts shall be to pay for Work satisfactorily performed after the date of the assignment. In the event that a conditional assignment has not been executed, the Contractor must execute or cause to be executed any assignment, agreement, or other document which may be necessary, in the sole opinion of City's legal counsel, to evidence or effect compliance with this provision. The Contractor must promptly deliver such documents upon the City's request. In the case of any Subcontract so assigned and accepted by the City, the Contractor shall remain liable to the Subcontractors for any payment already invoiced to and paid by the City, and for any claim, suit, or cause of action based on or the result of any error, omission, negligence, fraud, willful or intentionally tortuous conduct, or any other act or omission, or breach of Contract by the Contractor, its officers, employees, agents, and other Subcontractors, arising prior to the date of assignment to the City, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise

resolved as of that date. The Contractor must notify its Subcontractors of these requirements.

4. The right to terminate the Contract as to any or all of the Work yet to be performed. In the event of termination, all costs and changes incurred by the City, together with the cost of completing the Work, will be deducted from any moneys due or which may become due to the Contractor. In case the expense so incurred by the City will be less than the sum which would have been payable under the Contract, if it had been completed by the Contractor and had not been forfeited by the Contractor, then the Contractor shall be entitled to receive the difference, subject to any claims or liens thereon, which may have been filed or any prior assignment filed with the City. In case the expense incurred by the City will exceed the sum which would have been payable under the Contract, the Contractor and the surety will be liable and will pay to the City the amount of such excess.
5. The right of specific performance, an injunction, or any other appropriate equitable remedy, as may be applicable.
6. The right of money damages, including but not limited to all expert witness or other consultant fees, court costs, and reasonable attorney's fees which the City may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an Event of Default hereunder.
7. The right to withhold all or any part of the Contractor's compensation.
8. The right to declare the Contractor or its Affiliate in default under any other City contract and to deem the Contractor non-responsible in future contracts to be awarded by the City.

E. Nonexclusivity.

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

F. Court Determination.

In the event the Contractor is terminated by the City pursuant to paragraph C.1 or C.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was not justified, such termination shall thereupon be deemed an Early Termination and the provisions of paragraph "H" shall apply.

G. Discretion of Chief Procurement Officer.

1. Whether to declare the Contractor in default is within the sole discretion of the Chief Procurement Officer and neither that decision nor the factual basis for it is subject to review or challenge under Article XVII, "Disputes and Claims" of the Contract's General Conditions.
2. In the event of termination of the Contract by the Chief Procurement Officer under Section XIII.C.1 or C.2, the Commissioner may use the material and equipment, whether owned or leased, which is within the scope of the Work or necessary for the completion thereof which has been paid for by the City (whether located on or off the site), to complete the Work and the Contractor shall receive no further payment until the Work is completed. Upon completion, if the unpaid balance of the price exceeds City's cost of completion, such excess shall be paid to the Contractor. However, if the cost of completion exceeds

the unpaid balance of the price, the Contractor must pay the difference to the City immediately upon demand.

H. Early Termination.

1. The City, through the Chief Procurement Officer, reserves the absolute right to terminate the Work of the Contractor, or any part thereof, by written notice stating the effective date of such termination. Immediately upon receipt of such notice, the Contractor must then provide similar written notice to the affected Subcontractor(s); whereupon such Contractor and Subcontractor(s) must, except for services necessary for the orderly termination of the Work: (i) stop all Work and place no further order or Subcontracts for materials, services, equipment or supplies; (ii) assign to the City, in the manner and to the extent directed, all of the rights of the Contractor(s) under Work orders, purchase orders and Subcontracts or sub-subcontracts relating to the portion of the Work that has been completed; (iii) terminate work orders, purchase orders, and Subcontracts outstanding to the extent that they relate to the Work and are not assigned to the City; (iv) take any action necessary to protect property in the Contractor's possession in which the City has or may acquire an interest; and (v) take any other action toward termination of the Work which the City may direct.
2. Contractor's compensation for all Work provided prior to the effective date of termination shall be on the same basis as provided in this Contract, but Contractor shall not be entitled to any lost profits on work that was terminated. The City shall also pay Contractor for any materials or equipment that were ordered in accordance with the approved Project CPM Schedule prior to Contractor's receipt of the notice of termination and that could not be cancelled, provided that the materials and equipment are delivered to the City and are found acceptable.

**END OF XVIII**



## **XIX. COMPLIANCE WITH ALL LAWS**

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

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

### **B. Certification of Compliance with Laws.**

By entering into this Contract with the City, Contractor 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 the contractor becomes aware of such information, it must immediately disclose it to the City.

### **C. Airport Rules and Regulations.**

The Contractor will comply, and will use all reasonable efforts to cause its workers, 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.

### **D. Title VI List of Pertinent Nondiscrimination Authorities.**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the non-discrimination statutes and authorities ("Title VI Pertinent Nondiscrimination Statutes and Authorities"), as amended, that are listed in Department of Transportation Order 1000.12 and Appendix B of Appendix 4 of FAA Order 1400.11, "Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration"; these include but are not limited to:

- 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);
- 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);
- 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);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 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 includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, contractor must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

E. Non-Discrimination.

1. Non-discrimination in Employment; Affirmative Action:

- a. It will be an unlawful employment practice for the Contractor to fail to hire, to refuse to hire, to discharge, or to discriminate against any individual with respect to compensation, or the terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, handicap, or national origin; or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise, adversely affect such individuals status as an employee, because of such individual's race, color, religion, sex, age, handicap, or national origin.
- b. Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin, or sex be excluded from participation in any employment activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person will be excluded on these grounds from participation in or receiving the services or benefits of any program or activity covered by this subpart. Contractor assures that it will require that its covered suborganizations provide assurance to Contractor that they similarly will undertake affirmative action programs and they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- c. The Contractor will comply with The Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq. (1981), as amended. The Contractor will further comply with Executive Order No. 11,246, 30 Fed. Reg. 12,319 (1965), 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); the Rehabilitation Act of 1973, 29 U.S.C. Sec. 793-794 (1981); the Americans with Disabilities Act, P.L. 101-336; 41 CFR part 60 et seq. (1990); Air Carriers Access Act, 49 U.S.C.A. 1374; and, FAA Circular No. 150/5100 15A.
- d. General Civil Rights Provisions

The Contractor 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 Contractors from the bid solicitation period through the completion of the Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases, the provision obligates the party or any transferee for the longer of the of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

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

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

a. Compliance with Nondiscrimination Requirements

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

- b. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- c. Non-discrimination: The contractor, 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 contractor 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.
- d. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor 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 contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- e. Information and Reports: The contractor 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 sponsor or the Federal Aviation Administration 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 contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- f. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be

appropriate, including, but not limited to:

- i. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - ii. Cancelling, terminating, or suspending a contract, in whole or in part.
- g. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
- 3. State Requirements: The Contractor will comply with 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; and the Environmental Barriers Act., 410 ILCS 25/1 et seq.
- 4. City Requirements:
  - a. The Contractor will comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended.
  - b. Further, the Contractor will furnish such reports and information as requested by the Chicago Commission of Human Relations.

Subcontractors: The Contractor agrees that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any such materials, labor or services in connection with this Contract.

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

The contractor 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 contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

G. Illinois Humans Rights Act.

The Contractor will comply with the provisions of the Equal Employment Opportunity Clause, the Illinois Human Rights Act, 775 ILCS 5/101 et seq., as amended, and the rules and regulations of the Illinois Department of Human Rights.

H. Prevailing Wage.

The Contractor will comply with 820 ILCS 130/0.01 et seq., as it may be amended (the "Act"), so long as the Act is in effect, in order to ensure that such persons covered by the Act are paid the prevailing wage rate as ascertained by the Illinois Department of Labor. The specified rates to

be paid to all laborers, workers, and mechanics for such craft or type of worker or mechanic as of the date of advertisement of this Contract are included in Part One of the Contract Documents. If the Illinois Department of Labor revises such prevailing wage rates, the revised rates will apply to this Contract, and Contractor will not be entitled to additional compensation therefore.

1. The term "general prevailing hourly rate", means the hourly cash wages plus fringe benefits for health and welfare, insurance, vacations and pensions paid generally, in the locality in which the Work is being performed, to employees engaged in Work of a similar character on public Work.

I. 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, Contractor 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.

Beginning on July 1, 2015, and every July 1 thereafter, the hourly wage specified by the Executive Order shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor. Any hourly wage increase shall be rounded up to the nearest multiple of \$0.05. Such increase shall remain in effect until any subsequent adjustment is made. On or before June 1, 2015, and on or before every June 1 thereafter, the City shall make available to City Concessionaires 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 contractors operations, does not directly relate to the services provided to the City under the contract, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on City property or at a City jobsite. 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 Contractor must pay the Minimum Wage. Likewise, if the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Contractor must pay the prevailing wage.***

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

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

As of July 1, 2017 the Base Wage is \$12.30. The current rate can be found on the Department of Procurement Services' website.

**Note: As of July 1, 2016, 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, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then the Contractor must pay the prevailing wage rates.

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

Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to three (3) years.

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

K. Chicago Minimum Wage Ordinance

On December 2, 2014, the City Council of the City of Chicago passed a new chapter of the Municipal Code, chapter 1-24, specifying a minimum wage of \$10.00 per hour to be paid to all workers within the City of Chicago, not just employees of City contractors, effective July 1, 2015.

As of July 1, 2016, the minimum wage under chapter 1-24 of the Municipal Code is \$10.50 per hour. Every July 1 until 2019, these wages will increase. In 2017, the minimum rate for non- tipped employees will be \$11.00/hour, in 2018, it will be \$11.50/hour, and in 2019, it will be \$12.00/hour. If the Contractor is required by Executive Order 2014-1, the Base Wage Ordinance, or any other law (e.g., the Prevailing Wage Act) to pay a higher rate, above the generally applicable Chicago minimum wage, the higher rate will apply.

L. Chicago Paid Sick Leave Ordinance

On June 22, 2016, the City Council passed a new section of the Minimum Wage Ordinance, which required paid sick leave and became effective on July 1, 2017, codified at Section 1-24-045 of the Municipal Code of Chicago. Contractor understands that, to the extent the Ordinance applies to its activities, it must comply with the Ordinance.

M. Non-Collusion, Bribery of a Public Officer or Employee.

The Contractor, in performing under this Contract, will comply with the Municipal Code of

Chicago, Section 2-92-320, as follows:

1. No person or business entity will be awarded a Contract or Subcontract 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 any state or local government in the United States, in that office's 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.
2. 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.
3. Ineligibility under this section will continue for three years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the Chief Procurement Officer under certain specific circumstances. Reference is made to Section 2-92-320 for a detailed description of the conditions which would permit the Chief Procurement Officer to reduce, suspend, or waive the period of ineligibility.

N. Conflict of Interest.

1. No member of the governing body of the City or other units of government and no other officer, employee, or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Contract pertains, will 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 will be permitted to any share or part of this Contract or to any financial benefit to arise from it.
2. The Contractor covenants that it, its officers, directors and employees, and the officers, directors and employees of each of its members if a joint venture, and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of the Work hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest will be employed. The Contractor agrees that if the City, by the Commissioner in his or her reasonable judgment, determines that any of Contractor's work for others conflicts with the Work, the Contractor will terminate such other services immediately upon request of the City.

O. Office of Inspector General (Chapter 2-56 of the Municipal Code):

1. It will be the duty of any bidder, proposer, contractor, all subcontractors and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, contractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Chicago Municipal Code. The Contractor understands and will abide by all provisions of Chapters 2-56 of the Municipal Code of Chicago.
2. All Subcontracts or purchase orders entered into by the Contractor with parties providing materials, labor or services to complete the Work, must contain the following statement regarding Chapters 2-56 of the Chicago Municipal Code, Office of the Inspector General. If the Contractor fails to incorporate the required language in all Subcontracts or purchase orders, the provisions of these Sections are deemed to be incorporated in all Subcontracts or Purchase Orders.

"The Subcontractor, (material supplier or other entity) its officers, directors, agents, partners and employees must cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Chicago Municipal Code and the Subcontractor (material supplier or other entity) understands and will abide by all provisions of these sections of the Municipal Code."

P. Governmental Ethics Ordinance (Chapter 2-156 of the Municipal Code).

1. The Contractor must comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics", including but not limited to Section 2-156-120 of this chapter 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.
2. Any contract negotiated, entered into, or performed in violation of any of the provisions of this chapter will be voidable as to the City.

Q. Business Relationships with Elected Officials.

1. Pursuant to Section 2-156-030(b) of the Municipal Code 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.
2. Violation of Section 2-156-030 of the Municipal Code 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 Chapter 2-156 of the Municipal Code.

R. Anti-Scofflaw (Section 2-92-380 of the Chicago Municipal Code).

1. In accordance with Section 2-92-380 of the Municipal Code of Chicago and in addition to



any other rights and remedies (including any of set-off) available to the City of Chicago (City) under the 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/ or the amount of any debt owed by the contracting party to the City.

2. 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. "Debt" means a specified sum of money owed to the City for which the period granted for payment has expired.
3. Notwithstanding 1 above, no such debt(s) or outstanding violation complaint (s) will be off set from the Contract Price or compensation due under the Contract if one or more of the following conditions are met:
  - a. The Contractor has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking complaints and/or debts owed to the City and the Contracting party is in compliance with the agreement; or
  - b. The Contractor is contesting liability for the amount of the debt in a pending administrative or judicial proceeding; or
  - c. The Contractor has filed a petition in bankruptcy and the debts owed in the City are dischargeable in bankruptcy.

S. Americans with Disabilities Act.

1. Any and all Work performed must comply with all Federal, State, and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: American with Disabilities Act, P.L. 101-336 (1990) and the Uniform Federal Accessibility Guidelines for Buildings and Facilities ("ADAAG") and, the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq. (1991), and the regulations promulgated thereto at 71 Ill. Adm. Code Ch. 1, Sec. 400.110. In the event that the above cited standards are inconsistent, the Contractor will comply with the standard providing greater Accessibility.

T. Economic Disclosure Statement and Contractor's Affidavit (EDS).

1. Prior to Contract award: Pursuant to Chapter 2-154-010, 2-154-020 and 2-154-030 of the Municipal Code of the City of Chicago, any person, or business entity of agency submitting a bid proposal to or contracting with the City of Chicago will be required to complete Section I, Disclosure of Ownership Interests, in the EDS. The Contractor must complete EDS(s) in which the Contractor (and its parent entities, if applicable) identifies all persons with 7.5% or more ownership interest and in which Contractor certifies (among other things) that the Contractor, 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 Section 65 ILCS 5/11-42.1-1 of the Illinois Municipal Code and c) are not presently debarred or suspended from public contracts.
2. Updates: Until Final Completion of the Project, the Contractor must provide, without need for request by the City, an updated EDS(s) if there is any change in ownership or change in any other circumstance that would render the EDS(s) then currently on file inaccurate or obsolete. Failure to provide an updated EDS(s) when required is an event of default. Any change in ownership that is within the Contractor's reasonable control (such as the sale of an ownership interest in a non-publicly traded entity) is subject to the prior written consent

by the Commissioner and Chief Procurement Officer, and Contractor's failure to obtain such prior written consent is an event of default. In the event of a change in ownership outside of the Contractor's reasonable control (such as acquisition of controlling interest in Contractor through purchase of shares on a public exchange), the City shall have the right to invoke the "Early Termination" provision if the Chief Procurement Officer determines such termination to be in the City's best interest.

U. MacBride Principles Ordinance.

1. The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.
2. In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if the Contractor conducts any business operations, it 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).
3. For those contractors who will take exception in competitive bid contracts to the provisions set forth above, the City will assess an eight percent (8%) penalty. This penalty will increase their bid price for the purpose of canvassing the bids in order to determine whose is to be the lowest responsible bidder and will not apply for purposes of any contract payment.
4. The provisions of this Section will not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

V. Employment of City and Project Area Residents

1. Chicago and Project Area Residency Ordinance, Section 2-92-330 of the Chicago Municipal Code:
2. If the funding for this contract is \$100,000 or more and except as otherwise prohibited by law, the Contractor and all Subcontractors that perform work on the site on the construction project undertaken pursuant to this Contract will comply with the minimum percentage of total worker hours performed by eligible residents of the City of Chicago specified in Section 2-92-330 of the Municipal Code of Chicago and any rules or regulations adopted thereunder (7.5% of the total work hours must be performed by project area residents and 50% of the total work hours must be performed by city residents unless the Chief Procurement Officer determines otherwise). Work hours performed by project area residents are counted as work hours performed by city residents for purposes of calculating the minimum work hour percentage required to be performed by city residents. Provided, however, that in addition to complying with this percentage, the Contractor and all Subcontractors will make good faith efforts to utilize eligible residents of the City of Chicago in both unskilled and skilled labor positions.
3. A contractor or bidder may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 in accordance with standards and procedures developed by the Chief Procurement Officer.
4. "City residents" means persons domiciled within the city.
5. "Project area residents" means persons domiciled within that part of the city designated as the project area in the information for bidders issued by the Department of Procurement Services.

6. "Domicile" means an individual's one and only true, fixed and permanent home and principal establishment.
7. "Eligible residents" means city residents and project area residents.
8. The Contractor will provide for the maintenance of adequate employee residency records to ensure that eligible residents are employed on the project. The Contractor and Subcontractors will maintain copies of personal documents supportive of every Chicago employee's actual record of residence.
9. Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the Commissioner of the supervising department in triplicate, will identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date the company hired the employee should be written in after the employee's name.
10. Full access to the Contractor's and Subcontractor's employment records will be granted to the Chief Procurement Officer, the Commissioner of the supervising department, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Contractor and Subcontractors will maintain all relevant personnel data and records for a period of at least three years after final acceptance of the Work.
11. At the direction of the supervising department, affidavits and other supporting documentation will be required of the contractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen. Good faith efforts on the part of the Contractor to provide utilization of eligible residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) will not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by eligible residents.
12. When work is completed, in the event that the City has determined that the Contractor failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by eligible residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance it is agreed that 1/20 of 1 percent (1%), 0.0005, of the approved contract value for this contract will be surrendered by the Contractor to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed. The willful falsification of statements in the certification of payroll data may subject the Contractor or Subcontractors or employee to prosecution.
13. Nothing herein provided will be construed to be a limitation upon the 'Notice of Requirements For Affirmative Action To Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246" or other affirmative action required for equal opportunity under the provisions of this contract. The Contractor will include this provision in all subcontracts.

W. Compliance with Child Support Orders.

The Contractor in performing under this contract will comply with the Chicago Municipal Code Section 2-92-415 Compliance With Child Support Orders. The term Contractor, for the purpose of compliance with this Section, includes any "Substantial Owner". A "Substantial Owner" means any person who, directly or indirectly, owns or holds a 10% or more interest in the Contracting entity. This may include individuals disclosed in the Part One (Disclosure of Ownership Interests), and individuals disclosed in an Economic Disclosure Statement filed by an "Entity holding an interest in the Applicant".

X. Veterans Preference.

1. The Contractor will insure that the following provision is inserted in all contracts entered into with any Contractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or services in connection with this Contract.
2. The contractor will comply with the provisions of 330 ILCS 55/0.01 et. seq. provisions of Ill. Rev. Stat., Ch. 126 2, Par. 23 which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative and supervisory positions) preference will be given to veterans of the Vietnam era and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates.
3. "In the employment of labor (except in executive, administrative, and supervisory positions), preference must be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Title 49 United States Code, Section 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates."

Y. Employment of Illinois Laborers on Airport Projects.

Contractor 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.

Z. Steel Products.

1. This Contract will be subject to all provisions of the "Steel Products Procurement Act", 30 ILCS 565/1 et seq., as it may be amended from time to time. Steel Products issued or supplied in the performance of this Contract or any subcontract thereto will be manufactured or produced in the United States.
2. For purposes of this Section "United States" means the United States and any place subject to the jurisdiction thereof and "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed or processed by a combination of two or more such operations, from Steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making processes. Knowing violation of this Section may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

AA. Licensing of General Contractor's Ordinance.

1. The Contractor must comply with all requirements of Chapter 4-36, Licensing of General Contractors, of the Chicago Municipal Code.

BB. Federal Ineligible Contractors.

1. Contractor warrants and represents that neither Contractor nor any Affiliate of Contractor, as defined below, appears on the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of 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 of judgment.

CC. Prohibition on Certain Contributions (Mayoral Executive Order No. 2011-4).

1. No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("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 fund-raising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.
2. Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor approached the City, as applicable, regarding the formulation of this Contract, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.
3. Contractor shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.
4. 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.
5. 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.
6. If Contractor violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Contract resulting from this specification, the Chief Procurement Officer may reject Contractor's bid.
7. For purposes of this provision:

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

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

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

DD. Business Enterprises Owned or Operated by People with Disabilities.

The City encourages Contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of

Chicago, where not otherwise prohibited by federal or state law.

EE. 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 Agreement voidable at the option of the City, notwithstanding any prior review or acceptance by the City of any materials containing such misrepresentation. In addition, the City may debar Contractor, assert any contract claims or seek other civil or criminal remedies as a result of a misrepresentation (including costs of replacing a terminated Contractor pursuant to Chicago Municipal Ordinance 1-21-010).

FF. Ineligibility to do Business with the City

Failure by the Contractor any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-30 of the Municipal Code of Chicago shall be grounds for termination of this Contract.

GG. Disclosure of Ownership Interest in Entities

The Contractor will keep disclosure of ownership interests and other information current as required by Section 2-154-020 of the Municipal Code of Chicago.

HH. City Hiring Plan Provisions

1. 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.
2. Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Contract are employees or subcontractors of Contractor, not employees of the City of Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.
3. 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.
4. In the event of any communication to Contractor by a City employee or City official in violation of paragraph 2 above, or advocating a violation of paragraph 3 above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Contract.

Contractor will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the Contract.

II. Project Labor Agreement

Pursuant to an Ordinance passed by City Council, effective as of February 22, 2011, the City has entered into the Multi-Project Labor Agreement ("PLA"), which is hereby referenced and included in the Contract Documents, with various trades regarding projects as described in the PLA, together with a list of signatory unions. Contractor acknowledges familiarity with the requirements of the PLA and its applicability to any Work under this Agreement, and shall comply in all respects with the PLA.

JJ. 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:

1. The Contractor must comply with the Clean Diesel Contracting Ordinance, Section 2-92-595 of the Municipal Code of Chicago.
2. The Contractor 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.
3. The Contractor 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.
4. The Contractor and any Subcontractor(s) may not use any of the following vehicles and equipment in the performance of the contract:
  - a. 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
  - b. 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.
5. 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 Contractor, through such engine or retrofit technology used directly by the Contractor 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). Contractor 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 Contractor 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.
6. The City may conduct an audit of the Contractor 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 Contractor or any Subcontractor fails to utilize ULSD or fails to minimize idling or comply with anti-idling requirements, Contractor 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.

Contractor 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.

KK. Duty to Report Corrupt or Unlawful Activity

Pursuant to MCC 2-156-018, it is the duty of the Contractor to report to the Inspector General, directly and without undue delay, any and all information concerning conduct which it knows to involve corrupt activity. "Corrupt activity" means any conduct set forth in Subparagraph (a)(1), (2), or (3) of 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).

LL. Equal Pay Act

The Contractor 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.

MM. Electronic Mail Communication

Electronic mail communication between Contractor and City employees must relate only to business matters between Contractor and the City.

NN. EDS Update Obligation

Contractor 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 Contractor in default, termination of the Contract for default, and declaring that the Contractor is ineligible for future contracts.

OO. Wheel Tax (City Sticker)

Contractor must pay all Wheel Tax required by Chapter 3-56 of the MCC, as amended from time to time. Contractor 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.

PP. 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

Contractor and any Subcontractor must comply with MCC 2-92-597. Contractor 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

Contractor 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, the contractor 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 the Contractor and any Subcontractor;
- b. the number of large vehicles used in the performance of the Contract by the Contractor 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 the Contractor 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 the Contractor 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.

5. Time Extension and Annual Waiver Requests

Upon a written request, accompanied by a compliance plan, of a Contractor or Subcontractor of a Contract entered on or before December 31, 2018, the CPO, in consultation with the Department, may grant a time extension of not more than six months for compliance with the requirements of MCC 2-92-597 with regard to the Contract.

Contractor 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).

6. Costs

All costs that the contractor or any subcontractor may incur to comply with contract requirements imposed pursuant to this section are incidental to the overall contract. No additional time or monies shall be granted to the contractor for compliance with these requirements.

7. Enforcement

The CPO or Commissioner 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.

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. For purposes of MCC 2-92-597, a person knowingly makes a false statement of material fact when such person makes a false statement of material fact as provided in subsection (d) of Section 1-21-010.

**END OF XIX**

## **XX. MISCELLANEOUS**

### **A. General Provisions.**

1. Counterparts: This Contract is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.
2. Amendments: No changes, amendments, modifications, cancellation, or discharge of this Contract, or any part thereof, will be valid unless in writing and signed by the parties hereto, or their respective successors and assigns, in accordance with all applicable laws.
3. Governing Law and Jurisdiction: This Contract will be governed in accordance with the laws of the State of Illinois, without regard to choice of law principles. The Contractor hereby irrevocably submits, and will cause its Subcontractors to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract. The Contractor agrees that service of process on the Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor.
4. Consent to Service of Process: The Contractor agrees that service of process on the Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor. The Contractor designates and appoints the representative identified on the signature page hereto under the heading "Designation of Agent for Service Process", as its agent in Chicago, Illinois, to receive on its behalf service of all process (which representative will be available to receive such service at all times), such service being hereby acknowledged by such representative to be effective and binding service in every respect. Said agent may be changed only upon the giving of written notice by the Contractor to the City of the name and address of a new Agent for Service of Process who works within the geographical boundaries of the City of Chicago. Nothing herein will affect the right to serve process in any other manner permitted by law or will limit the right of the City to bring proceedings against the Contractor in the courts of any other jurisdiction.
5. Assigns: All of the terms and conditions of this Contract are binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees, and assigns.
6. Co-operation by Parties: The parties hereby agree to act in good faith in the performance of this Contract and to co-operate with each other in the completion of the Work hereunder. The Contractor further agrees to implement such measures as may be necessary to ensure that its staff and its subcontractors will be bound by the provisions of this Contract. The City will be expressly identified as a third party beneficiary in the subcontracts and granted a direct right of enforcement thereunder.
7. Joint and Several Liability: In the event that Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Contractor will be the joint and several obligation or undertaking of each such individual or other legal entity.
8. 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.

B. Notices of Events of Default and Termination Under Article XVIII.

1. Notices of events of default and termination pursuant to Article XVIII will be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:
  - a. If to the City: Commissioner of Aviation, AMF O'Hare, P.O. Box 66142, 10510 W. Zemke Road, Chicago, IL 60666
  - b. With Copies to: The Chief Procurement Officer, 121 North LaSalle Street, City Hall Room 806, Chicago, IL 60602
  - c. If to the Contractor: The address identified on its Bid
  - d. With Copies to: The Surety
2. Notices delivered by mail will be deemed effective three (3) days after mailing in accordance with this section. Notices delivered personally will be deemed effective upon receipt. The addresses stated herein may be revised without need for modification or amendment of this Contract, provided written notification is given in accordance with this section.

C. Authority.

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

D. No Waiver of Legal Rights.

1. Neither the acceptance of 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, shall operate as a waiver by the City of any portion of the Contract, or of any power herein reserved or any right of the City to damages herein provided. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.
2. Miscellaneous Provisions: Whenever under this Contract the City by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the City's or the Contractor's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and will not be deemed a waiver forever or for subsequent instance of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Contract regardless of the number of times the City may have waived the performance, requirement, or condition.
3. False statements made in connection with this Contract, including statements in, omissions from and failures to timely update the Economic Disclosure Statement (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 misrepresentation. In addition, the City may debar Contractor, assert any contract claims or seek other civil or criminal remedies as a result of a misrepresentation (including costs of replacing a terminated Contractor pursuant to Chicago Municipal Code 1-21-010).

**END OF XX**