

## **APPENDIX 1 ePROCUREMENT**

This is an eProcurement Bid. Bids are to be submitted through the City's "iSupplier" system, the City's eProcurement computer system for electronic bidding and providing Contractors with access to contract, ordering and payment information for their City contracts. The following provisions apply to this bid and supersede any conflicting provisions in Books 1, 2, and 3.

### **1. Obtaining the Bid Documents**

Bidders are solely responsible for obtaining all Bid Documents, including Clarifications and Addenda. Documents may be downloaded from the Department of Procurement Service's ("DPS") website at the following URL:

<http://www.cityofchicago.org/eProcurement>

Click on "Current Bids."

In order to receive notice of clarifications and addenda, Bidders must be registered for and log-in to iSupplier, search for the solicitation number, open the solicitation for review, and accept the disclaimer. This will sign Bidders up for notifications.

Bid Document Holders are listed on the Bid & Bond Room Opportunity Take Out List. The Opportunity Take Out List is public information and is posted to the DPS web site at [www.cityofchicago.org/TOL](http://www.cityofchicago.org/TOL). To find Opportunity Take Out lists go to "Get Started Online," click "Opportunities" and search by the specification number.

### **2. Clarifications and Addenda**

The City will send an email notification to suppliers who have indicated intent in a Bid that an addendum or clarification has been issued. The Clarifications and Addenda incorporated into the electronic bid document available at the following URL:

<https://www.cityofchicago.org/eProcurement>

Suppliers that have indicated interest in a Bid will receive email notification that an addendum or clarification has been issued. There may be multiple Clarifications and Addenda. Failure to obtain Clarifications and/or Addenda, for whatever cause, will not relieve a Bidder from the obligation to bid according to and comply with any changed or additional terms and conditions contained in the Clarifications and Addenda.

Electronic Acknowledgement of Clarifications and/or Addenda is mandatory to submit an electronic Bid. Any harm to the bidder resulting from failure to obtain all necessary documents, for whatever cause, will not be valid grounds for a protest against award(s) made under this bid solicitation.

### **3. Questions Regarding the Bid Documents; Bidder Inquiry Deadline**

All inquiries regarding the Bid Documents or procurement process may be directed to the Procurement Specialist/Senior Procurement Specialist in iSupplier via online discussion or via email at the email address listed on the front cover of the Bid Documents.

**The Bidder Inquiry Deadline is listed on the front cover of the Bid Documents under "Deadline for Questions."** Inquiries received after the Bidder Inquiry Deadline will not be answered except at the discretion of the Chief Procurement Officer.

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

#### **4. Preparation of Bids & Completion of the Bid Documents**

Each Bidder must complete all of the forms listed on the Bid Submittal Checklist (with the exception of the Proposal Pages) in the Requirements section and scan and upload them as attachments to the electronic bid submission. Bidders may not change any of the Bid Documents. Any changes made by a Bidder to the Bid Documents may result in rejection of the Bid, and will not be binding upon the City.

Bidders must submit their pricing electronically by filling out bid lines in the electronic Price Schedule in the iSupplier system.

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

#### **5. Submission of Bids - Date, Time, and Place**

Bids are to be submitted electronically to the Department of Procurement on the date and prior to the time stated on the Cover Page of the Bid Documents, or any addendum issued by the City to change such Bid Opening Date. No bid will be accepted after the Bid Opening Date. The time of the receipt of the bid will be determined solely by the "Time of Quote" generated by the iSupplier system.

#### **6. Bid Deposit**

5% of the Total Base Bid

When submitting an electronic bid, scan and upload a copy of your bid deposit with your submittal documents. The 1st and 2nd apparent low bidders will be required to deliver their original and properly executed bid deposit to the Bid & Bond Room within 2 business days following the Bid Opening Date.

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

**PN7541B**  
**LARGE DIAMETER SEWER MAIN REHABILITATION**  
21<sup>st</sup> and Cermak

**CITY OF CHICAGO**  
**DEPARTMENT OF WATER MANAGEMENT**



**LORI LIGHTFOOT**  
**MAYOR**

Issued by the  
**DEPARTMENT OF PROCUREMENT SERVICES**

**IEPA Funding**

September 2019  
(The City may from time to time revise these terms and conditions)

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**  
 (September 2019)

**TABLE OF CONTENTS**

**GENERAL PROVISIONS.....1**

**A. ACRONYMS ..... 1**

**B. DEFINITIONS ..... 1**

**C. USAGE AND CONTRACT INTERPRETATION ..... 4**

**D. SEVERABILITY ..... 5**

**E. ESTIMATES OF QUANTITIES..... 5**

**F. ORDER OF PRECEDENCE OF COMPONENT CONTRACT PARTS ..... 5**

**G. ENTIRE AGREEMENT ..... 6**

**II. PROJECT ORGANIZATION .....6**

**A. THE COMMISSIONER ..... 6**

**B. THE CHIEF PROCUREMENT OFFICER ..... 6**

**C. CONTRACTOR..... 6**

**III. CONTRACTOR’S OBLIGATIONS .....7**

**A. CONTRACTOR..... 7**

**B. SUBCONTRACTORS..... 9**

**C. SITE CONDITIONS AND INSPECTION..... 10**

**D. CLEANING UP ..... 11**

**E. CONTRACTOR'S WARRANTIES AND REPRESENTATIONS ..... 11**

**IV. PROPERTY ..... 14**

**A. OWNERSHIP OF PROPERTY ..... 14**

**B. OWNERSHIP OF DETAILED SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS ..... 14**

**C. RIGHT OF ENTRY ..... 15**

**D. DAMAGE TO CITY PROPERTY ..... 16**

**E. RIGHT TO OCCUPY BEFORE SUBSTANTIAL COMPLETION ..... 16**

**F. FINAL COMPLETION AND ACCEPTANCE OF THE WORK ..... 16**

**V. SHOP DRAWINGS, PRODUCT DATA, RECORDS AND SAMPLES.....18**

**A. CONTRACTOR'S RESPONSIBILITIES AND SUBMITTAL PROCEDURES ..... 18**

**B. REVIEW BY THE COMMISSIONER ..... 20**

**C. SOURCE OF MATERIALS ..... 21**

**D. RECORD DOCUMENTS ..... 22**

**E. RECORD DRAWINGS..... 22**

**F. RECORD SHOP DRAWINGS AND PRODUCT DATA..... 22**

**G. CONSTRUCTION PROGRESS PHOTOGRAPHS ..... 23**

**H. INSTRUCTIONS, PARTS LIST AND OPERATION AND MAINTENANCE MANUALS..... 23**

**I. ADJUSTMENT OF EQUIPMENT ..... 24**

**J. PROJECT ACCOUNT RECORDS ..... 24**

**VI. ASSIGNMENT .....26**

**A. ASSIGNMENT OF CONTRACT BY CONTRACTOR ..... 26**

**B. ASSIGNMENT OF FUNDS OR CLAIMS BY CONTRACTOR..... 26**

**C. ASSIGNMENT OF CONTRACT BY CITY ..... 26**

**D. ASSIGNS ..... 26**

**E. REQUESTS TO SUBCONTRACT..... 26**

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

<b>VII. QUALITY OF WORKMANSHIP, EQUIPMENT AND MATERIALS .....</b>	<b>26</b>
<b>A. STANDARD OF PERFORMANCE .....</b>	<b>26</b>
<b>B. CORRECTION OF WORK.....</b>	<b>27</b>
<b>C. MATERIALS AND EQUIPMENT.....</b>	<b>27</b>
<b>D. SUBSTITUTION OF MATERIALS .....</b>	<b>28</b>
<b>E. WARRANTIES .....</b>	<b>29</b>
<b>VIII. PERSONNEL.....</b>	<b>30</b>
<b>A. COMPETENCY OF WORKERS.....</b>	<b>30</b>
<b>B. SUPERVISION AND SUPERINTENDENCE.....</b>	<b>31</b>
<b>C. CONTRACTOR'S PROJECT PERSONNEL.....</b>	<b>31</b>
<b>D. KEY PERSONNEL .....</b>	<b>31</b>
<b>E. DAVIS-BACON PREVAILING WAGES .....</b>	<b>31</b>
<b>F. MINIMUM WAGE, MAYORAL EXECUTIVE ORDER 2014-1 .....</b>	<b>32</b>
<b>G. INTENTIONALLY OMITTED .....</b>	<b>33</b>
<b>H. WORKING HOURS IN CITY CONTRACTS .....</b>	<b>33</b>
<b>IX. PERMITS AND LICENSES.....</b>	<b>33</b>
<b>A. CONTRACTOR OBTAINS PERMITS .....</b>	<b>33</b>
<b>B. CONTRACTOR PAYS PERMIT FEES.....</b>	<b>33</b>
<b>C. OCCUPANCY PLACARD AND FEES .....</b>	<b>33</b>
<b>X. COORDINATION WITH OTHER CITY DEPARTMENTS .....</b>	<b>33</b>
<b>A. WATER SYSTEM WORK AND USAGE .....</b>	<b>33</b>
<b>B. SEWER SYSTEM WORK .....</b>	<b>34</b>
<b>C. PARKING METER REMOVAL AND REPLACEMENT.....</b>	<b>34</b>
<b>D. TRAFFIC AND PARKING SIGN REMOVAL AND REPLACEMENT .....</b>	<b>35</b>
<b>E. TREES .....</b>	<b>35</b>
<b>F. DEMOLITION .....</b>	<b>35</b>
<b>XI. SCHEDULE .....</b>	<b>36</b>
<b>A. TIME .....</b>	<b>36</b>
<b>B. PROGRESS SCHEDULE .....</b>	<b>36</b>
<b>C. CONSTRUCTION OPERATIONS PLAN.....</b>	<b>37</b>
<b>D. CRITICAL PATH METHOD (“CPM”) SCHEDULE.....</b>	<b>37</b>
<b>E. RECOVERY SCHEDULE .....</b>	<b>41</b>
<b>F. TIME FOR COMPLETING PUNCH LIST.....</b>	<b>41</b>
<b>G. NO DAMAGES FOR DELAY; EXTENSIONS OF TIME .....</b>	<b>42</b>
<b>H. SUSPENSION OF WORK.....</b>	<b>43</b>
<b>I. LIQUIDATED DAMAGES.....</b>	<b>43</b>
<b>XII. MEETINGS.....</b>	<b>44</b>
<b>A. PRE-CONSTRUCTION MEETING .....</b>	<b>44</b>
<b>B. WEEKLY REVIEW MEETINGS .....</b>	<b>44</b>
<b>C. MONTHLY REVIEW MEETINGS.....</b>	<b>45</b>
<b>XIII. PAYMENTS.....</b>	<b>45</b>
<b>A. CONTRACT PRICE.....</b>	<b>45</b>
<b>B. PROCEDURE FOR MONTHLY PAYMENT REQUESTS AND FINAL PAYMENT .....</b>	<b>46</b>
<b>C. PAYMENT FOR STORED MATERIAL .....</b>	<b>47</b>

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

<b>D.</b>	RETAINAGE .....	48
<b>E.</b>	PROMPT PAYMENT TO SUBCONTRACTORS .....	49
<b>F.</b>	PAYMENTS WITHHELD .....	51
<b>G.</b>	PAYMENT FOR CHANGES .....	53
<b>H.</b>	NIGHT, SUNDAY AND HOLIDAY WORK .....	59
<b>I.</b>	ACCELERATION .....	59
<b>J.</b>	Intentionally Omitted .....	59
<b>K.</b>	ELECTRONIC ORDERING AND INVOICES .....	60
<b>XIV. CHANGES IN THE WORK .....</b>		<b>60</b>
<b>A.</b>	CITY’S RIGHT TO CHANGE WORK .....	60
<b>B.</b>	CONTRACTOR’S REQUEST .....	60
<b>C.</b>	CONTRACT MODIFICATION .....	60
<b>D.</b>	CONTRACTOR'S RELEASE .....	60
<b>E.</b>	PERFORMANCE OF CHANGED WORK .....	61
<b>F.</b>	CHANGE CLAIMS AND DISPUTES .....	61
<b>XV. TESTING &amp; INSPECTION .....</b>		<b>61</b>
<b>A.</b>	MATERIAL, INSPECTION AND RESPONSIBILITY .....	61
<b>B.</b>	INSPECTION OF THE WORK .....	61
<b>C.</b>	MATERIALS AND EQUIPMENT TESTING AND INSPECTION .....	62
<b>D.</b>	TESTING LABORATORY LABELS .....	63
<b>XVI. CONTRACTOR PRACTICES AT SITE .....</b>		<b>64</b>
<b>A.</b>	COOPERATION AMONG CONTRACTORS .....	64
<b>B.</b>	PROTECTION OF PERSONS AND PROPERTY .....	64
<b>C.</b>	PROTECTION OF STREETS, ALLEYS AND PUBLIC GROUNDS .....	67
<b>D.</b>	PROTECTION OF EXISTING TREES IN THE RIGHT OF WAY .....	68
<b>E.</b>	CARE OF EXISTING STRUCTURES AND PROPERTY .....	69
<b>F.</b>	PRECAUTIONS AND SAFETY .....	73
<b>G.</b>	HEALTH, SAFETY AND SANITATION .....	74
<b>H.</b>	HAZARDOUS OPERATIONS AND SECURITY .....	76
<b>I.</b>	SERVICES AND USE OF SITE .....	78
<b>J.</b>	REPORTS AND PLANS .....	80
<b>XVII. ENVIRONMENTAL REQUIREMENTS .....</b>		<b>81</b>
<b>A.</b>	COMPLIANCE WITH ENVIRONMENTAL LAWS .....	81
<b>B.</b>	ENVIRONMENTAL PERMITS .....	81
<b>C.</b>	DISPOSAL OF MATERIALS, CONSTRUCTION DEBRIS, SOIL AND WASTE .....	82
<b>D.</b>	EQUIPMENT AND ENVIRONMENTAL CONTROL DURING TRANSPORT .....	83
<b>E.</b>	ENVIRONMENTAL CONTROL .....	83
<b>F.</b>	OPEN DUMPING PROHIBITED .....	83
<b>G.</b>	ENVIRONMENTAL PROTECTION .....	83
<b>H.</b>	CLEAN DIESEL FLEET (SECTION 2-92-595 OF THE CHICAGO MUNICIPAL CODE) .....	84
<b>XVIII. INSURANCE, INDEMNITY AND BONDS .....</b>		<b>86</b>
<b>A.</b>	INDEMNITY .....	86
<b>B.</b>	CONTRIBUTION .....	87
<b>C.</b>	ADMIRALTY .....	87
<b>D.</b>	PERFORMANCE AND PAYMENT BONDS .....	87

**Department of Water Management  
Terms and Conditions for Construction Contract - Book 1**

(September 2019)

E.	INSURANCE .....	88
<b>XIX.</b>	<b>CLAIMS AND DISPUTES.....</b>	<b>88</b>
A.	GENERAL .....	88
B.	CLAIMS .....	89
C.	DISPUTES .....	89
<b>XX.</b>	<b>EVENTS OF DEFAULT AND TERMINATION .....</b>	<b>90</b>
A.	CHIEF PROCUREMENT OFFICER'S RIGHT .....	90
B.	EVENTS OF DEFAULT .....	90
C.	REMEDIES .....	91
D.	NONEXCLUSIVITY OF REMEDIES .....	92
E.	ADJUDICATION OF TERMINATION .....	93
F.	EARLY TERMINATION .....	93
G.	NON-APPROPRIATION .....	94
<b>XXI.</b>	<b>COMPLIANCE WITH ALL LAWS.....</b>	<b>94</b>
A.	CONTRACTOR MUST COMPLY WITH ALL LAWS .....	94
B.	CIVIL RIGHTS ACT OF 1964, TITLE VI, COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS .....	94
C.	BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS .....	100
D.	INSPECTOR GENERAL .....	100
E.	GOVERNMENTAL ETHICS ORDINANCE .....	101
F.	FALSE STATEMENTS.....	101
G.	AMERICANS WITH DISABILITIES ACT .....	101
H.	PROHIBITION ON CERTAIN CONTRIBUTIONS – MAYORAL EXECUTIVE ORDER 2011-4 .....	101
I.	LICENSING OF GENERAL CONTRACTORS.....	103
J.	BUY AMERICA .....	103
K.	STEEL PRODUCTS.....	103
L.	NO WASTE DISPOSAL IN PUBLIC WAY MCC 11-4-1600(E).....	103
M.	DEEMED INCLUSION.....	104
N.	FIRMS OWNED OR OPERATED BY PEOPLE WITH DISABILITIES.....	104
O.	2014 CITY HIRING PLAN PROHIBITIONS.....	104
P.	DUTY TO REPORT CORRUPT ACTIVITY .....	105
Q.	EQUAL PAY.....	105
R.	ELECTRONIC MAIL COMMUNICATION.....	105
S.	WHEEL TAX (CITY STICKER) .....	106
T.	ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT ("EDS") .....	106
U.	SAFETY ENHANCING VEHICLE EQUIPMENT CONTRACTING (MCC 2-92-597).....	107
V.	POLICY PROHIBITING SEXUAL HARASSMENT (SECTION 2-92-612 OF THE CHICAGO MUNICIPAL CODE) .....	110
W.	POLICY ON NON-DISCLOSURE OF SALARY HISTORY (SECTION 2-92-385 OF THE CHICAGO MUNICIPAL CODE) 111	
<b>XXII.</b>	<b>MISCELLANEOUS.....</b>	<b>112</b>
A.	COUNTERPARTS .....	112
B.	MODIFICATIONS .....	112
C.	NO WAIVER OF LEGAL RIGHTS .....	112
D.	GOVERNING LAW .....	113
E.	CONSENT TO SERVICE OF PROCESS AND JURISDICTION .....	113
F.	CONTRACTOR COOPERATION .....	114
G.	JOINT AND SEVERAL LIABILITY .....	114

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

<b>H.</b>	NO THIRD PARTY BENEFICIARIES .....	114	
<b>I.</b>	NOTICES .....	114	
<b>J.</b>	AUTHORITY .....	114	
<b>K.</b>	SOFTWARE LICENSE AGREEMENTS .....	115	
<b>XXIII. SPECIAL CONDITIONS REGARDING MINORITY OWNED BUSINESS ENTERPRISE COMMITMENT AND WOMEN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION CONTRACTS AND VETERAN OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION .....</b>			<b>116</b>
<b>XXIV. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA) REQUIREMENTS .....</b>			<b>134</b>
<b>A.</b>	IEPA LOAN PROVISIONS .....	134	
A.	FOR WATER PROJECTS, THE CONTRACT BETWEEN THE CITY OF CHICAGO AND THE CONTRACTOR WILL BE SUBJECT TO REGULATIONS CONTAINED IN THE PROCEDURES FOR LOANS FROM THE PUBLIC WATER SUPPLY LOAN PROGRAM (35 IL ADMIN. CODE 662) .....	134	
B.	FOR SEWER PROJECTS, THE CONTRACT BETWEEN THE CITY OF CHICAGO AND THE CONTRACTOR WILL BE SUBJECT TO REGULATIONS CONTAINED IN THE PROCEDURES FOR LOANS FROM THE WATER POLLUTION CONTROL LOAN PROGRAM: WASTEWATER (35 IL ADMIN. CODE 365) .....	134	
<b>B.</b>	USEPA/IEPA DAVIS-BACON WAGE GUIDANCE .....	138	
<b>C.</b>	AMERICAN IRON AND STEEL .....	146	



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

**GENERAL PROVISIONS**

**A. Acronyms**

“ACI” - American Concrete Institute

“AED” - Associated Equipment Distributors

“AISC” - American Institute of Steel Construction.

“ANSI” - American National Standards Institute.

“ASME” - American Society of Mechanical Engineers.

“ASTM” - American Society for Testing and Materials

“EDS” - *See Section XXI.H.*

“CTA” - Chicago Transit Authority

“FEPC” - Fair Employment Practices Commission.

“IEPA” - Illinois Environmental Protection Agency.

“IDOT” - Illinois Department of Transportation.

“NEC” - National Electric Code.

“NFPA” - National Fire Protection Association

“NEMA” - National Electrical Manufacturer’s Association.

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

**B. Definitions**

1. “Architect/Engineer” means the person designated by the Commissioner to provide the Contract drawings and Detailed Specifications for the Work you are to perform.
2. “Business Days” means Monday through Friday, unless an officially designated City holiday falls on one of those days. By contrast, see “Day” (I.B.15).
3. “Chief Procurement Officer” means the Chief Procurement Officer for the City of Chicago, and any representative duly authorized in writing to act on his/her behalf.
4. “City” means the City of Chicago, a municipal corporation and home rule unit of government existing under the Constitution of the State of Illinois.
5. “Commissioner” means the head of the Department and any designee duly authorized in writing to act on his/her behalf. See also I.B.17.
6. “Comptroller” means City Comptroller or his designated representative.
7. “Consultant(s)” refers to the person, firm or corporation awarded a contract by the City to provide professional architectural or engineering design services or construction supervision for the Project.
8. “Contract” means this Contract, including your bid proposal (as accepted by the City), the City’s bid specification, which includes Books 1, 2, and 3, plans and drawings, addenda, all exhibits and schedules that are attached to it and documents incorporated in it by reference; fully executed performance and payments bond(s); and all

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

amendments, modifications, or revisions made from time to time in accordance with its terms.

9. "Contract Completion Date" is the date, determined by the Commissioner, on which the Project is to reach Substantial Completion. The Contract Completion Date will be determined based on the duration for the Project set by the Contract as adjusted by any Contract modifications that extend or reduce the duration of the Project.
10. "Contract Modification" means a written modification of the terms and conditions of this Contract, signed by you, the Chief Procurement Officer, the Mayor and the Comptroller.
11. "Contractor" or "you" means the person who is awarded the Contract.
12. "Contract Price" is defined in Section XIII.A.
13. "Contract Time" is the duration of the Work from when the Work is required to begin until the scheduled date for Substantial Completion, including approved time extensions. See I.B.42.
14. "Corporation Counsel" means the head of the City's Department of Law and any Assistant Corporation Counsel duly authorized to act on the Corporation Counsel's behalf.
15. "Day" means calendar day.
16. "Daytime Work" means work performed between the hours of 6:00 a.m. to 6:00 p.m.
17. "Department" means the City Department identified on the cover of this Contract.
18. "Detailed Specifications" means the written requirements for materials and equipment to be used in the Work, including any plans or drawings, and standards of performance for the Work, which are set forth in Book 3 or incorporated by reference.
19. "Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
20. "Equipment" means all machinery and equipment, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper and acceptable completion of the Work.
21. "Field Order" means the written order to you, signed by the Commissioner, unilaterally directing changes in the Work or the Contract Time, or directing you to take corrective action and to adhere to Contract.
22. "Final Completion and Acceptance of the Work " means the last date on which all of the following events have occurred: (i) the Commissioner has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract; (ii) final inspections have been completed and operations systems and equipment testing have been completed; (iii) final occupancy certifications have been issued; (iv) all deliverables have been provided to the Commissioner; and (v) all contractual requirements for final payment have been completed.
23. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas,

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2014, *et seq.*), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136, *et seq.*) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," or "toxic substance" (or comparable term) in any Environmental Law.

24. "Include" (in all of its forms) means "include without limitation" unless the context clearly indicates otherwise.
25. "Management Consultant" or "Program Manager" means the organization or entity, if any, that the City has retained to oversee the planning, design, and construction of the Project.
26. "Municipal Code" means the Municipal Code of Chicago.
27. "Night Work" means work performed between the hours of 6:00 p.m. and 6:00 a.m. unless otherwise defined in the plans.
28. "Notice to Bidders" means the Advertisement for Bids, the official notice inviting bids for the proposed Work to be done under this Contract.
29. "Notice to Proceed" means written authorization from the Commissioner for you to commence the Work on a specified date.
30. "Product Data" are illustrations, standard schedules, performance charts, instructions, descriptive literature, catalogs and brochures, performance and test data, test certifications, diagrams and other information furnished by you to illustrate a material, product or system for some portion of the Work.
31. "Project" means, collectively, the improvements you are to construct in accordance with the Contract.
32. "Provide" means furnish and install, unless otherwise specified in this Contract.
33. "Punch List" or "Punch List work" means minor adjustments, repairs or deficiencies in the Work, as determined by the Commissioner in his sole discretion.
34. "Record Documents" are all documents pertaining to the completed Work and the Project that the Contract requires you to provide to the City, including Record Drawings, Record Shop Drawings, product data, instructions, parts list, certified payrolls and operations and maintenance manuals.
35. "Record Drawings" means drawings reflecting the final built Project configuration, including approved modifications.
36. "Samples" mean physical examples that illustrate materials, equipment or workmanship. Samples include materials, fabricated items, equipment, devices, appliances, or parts of them, as called for in the Detailed Specifications and any other Samples that may be required by the Commissioner to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials proposed by you conform to the required characteristics.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

37. "Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the Work by you or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings include: fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and systems and methods of construction that may be required to show that the materials, equipment or system conform to the Contract requirements. Shop drawings must establish the actual detail of all manufactured and fabricated items and indicate the proper relation to the adjoining Work.
38. "Special Wastes" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 of 35 Illinois Administrative Code, Subtitle G, Ch. 1.
39. "Subcontractor" means any person or entity with whom you contract to provide any part of the Work, and all subcontractors of any tier, including suppliers and material persons, whether or not in privity with you.
40. "Submittal" means Schedule, Shop Drawings, Product Data or Samples and other items that the Contract may require you to submit to the Commissioner.
41. "Substantial Completion Date" is the date upon which you have met the requirements for Substantial Completion in the opinion of the Commissioner.
42. "Substantial Completion of the Project" or "Substantial Completion" means that, in the opinion of the Commissioner, you have completed all Work in accordance with the Contract, except for Punch List Work, and the City is able to occupy and use the Project for the purpose intended.
43. "Work" means all labor, materials, equipment, deliverables, and other incidentals to be provided by you under this Contract that are necessary or convenient to the successful completion of this Project and that are required by, incidental or collateral to the Contract.
44. "You" means "Contractor." See above.

**C. Usage and Contract Interpretation**

1. Unless a contrary meaning is specifically noted elsewhere, words such as, "as required," "as directed," "as permitted," and similar words mean that requirements, directions of, and permission of the Commissioner are intended. The words "approved," "acceptable," "satisfactory," or words of like import, mean "approved by," "acceptable to," or "satisfactory to" the Commissioner. The words "necessary," "proper," or words of like import as used regarding the extent, conduct or character of the Work specified means that Work must be conducted in a manner, to the extent, or be of character that is "necessary" or "proper" in the opinion of the Commissioner. The Commissioner's judgment in these matters is final and you are not permitted to contest it.
2. Where the imperative form of an address is used, such as "perform the excavating," "provide equipment required," "remove obstructions encountered," "furnish and install reinforcing steel bars," etc., that address is directed to you .

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

3. Any headings in this Contract are for convenience of reference only and do not define or limit its terms or provisions. All article and section references, unless otherwise expressly indicated, are to sections of this Contract. Words importing persons include firms, associations, partnerships, trusts, corporations, joint ventures and other legal entities, including public bodies, as well as natural persons. Words of any gender include correlative words of other genders. Words importing the singular number include the plural and vice versa, unless the context otherwise indicates. All references to any exhibit or document include the latest version and all supplements and/or amendments to any such exhibits or documents. All references to any person or entity include any person or entity succeeding to the rights, duties, and obligations of those persons or entities in accordance with the terms and conditions of this Contract.
4. Whenever reference to a law is contained in this Contract, the reference includes any amendments to the law.

**D. Severability**

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

**E. Estimates of Quantities**

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

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

**F. Order of Precedence of Component Contract Parts**

The order of precedence of the component contract parts is as follows:

1. Terms and Conditions;
2. Addenda if any;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2019)

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

The foregoing order of precedence governs the interpretation of the Contract in all cases of conflict or inconsistency in it.

**G. Entire Agreement**

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

**II. PROJECT ORGANIZATION**

**A. The Commissioner**

For the purposes of this Contract, the Commissioner, or any successor office to the Commissioner, will represent the City in all matters relating to the performance of your Work under this Contract and will constitute the point of receipt for all deliverables required under this Contract, unless expressly specified otherwise in this Contract. The Commissioner will decide all questions that arise with regard to the administration of the Contract such as to the quality and acceptability of materials furnished, the Work performed and rate of progress of the Work. The Commissioner will determine the amount and quality of Work performed and materials furnished and their estimates. The Commissioner's estimate will be a condition precedent to your right to receive money due under the Contract, but then only if the modifications or amendments to the Contract are approved in accordance with Article XIV, "Changes in the Work."

**B. The Chief Procurement Officer**

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

**C. Contractor**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**III. CONTRACTOR'S OBLIGATIONS**

**A. Contractor**

1. Except as may be expressly provided otherwise in the Contract, you are solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work. The intent of the Detailed Specifications is to describe the completed Work that you must provide to fulfill the requirements of the Contract. The Detailed Specifications are not intended to cover every detail of materials, parts, or activities necessary to complete the Work. You must perform all activities that may be required or necessary to complete the Work in accordance with the Contract. For the Contract Price, you must construct, furnish and install all materials, parts and labor necessary to complete the entire Work, whether or not the Contract particularly specifies or shows the details of Work.
2. The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. You are responsible for all division of work. However, wherever any provision of any section of the specifications conflicts with any agreements or regulations of any kind at any time in force among members of any trade or craft associations, unions or councils that regulate or distinguish that work is or is not included in the work of any particular trade, you must make all necessary arrangements to reconcile any such conflict without delay, damage, or cost to the City.
3. Before submission of your bid, you must (i) inspect the site of the proposed Work and familiarize yourself with all the site conditions that may affect your performance of the Work; and (ii) review the Detailed Specifications, plans and drawings provided with the bid documents, as required in the "Requirements for Bidding and Instructions to Bidders," in Book 2. If at any time before the bid opening you discover any errors, discrepancies or omissions in the Contract or any discrepancy between the Contract and the physical conditions at the site or in any drawings that may be provided later, you must notify the Chief Procurement Officer immediately, in writing for an interpretation through an Addendum.
4. This written request must be received by the Chief Procurement Officer no later than 10 days before bid opening, or no response will be provided. You will not be allowed to take advantage of your discovery of any such error or omission or discrepancy in the Contract after the award of the Contract. Any Work done after the discovery, unless authorized by the Chief Procurement Officer, will be done at your expense.
5. Except as otherwise expressly provided in the Contract, the Contract Price includes all costs and expenses for which you will be compensated in connection with the Contract, including
  - a. the costs of performing any or all of your obligations and duties under the Contract;
  - b. the costs of all materials, equipment, supplies, tools, machinery, labor, supervision, management and items of any and all kinds that are or may be necessary and incidental to the full and satisfactory completion of the Work, whether or not specified or indicated in the Contract;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

- c. the costs of permits, insurance, bonds and license;
- d. the costs associated with any risks you assume under the Contract;
- e. the costs associated with all warranties and guarantees;
- f. the costs of complying with the directives of the Chief Procurement Officer and/or the Commissioner;
- g. the costs of complying with all laws applicable to the Contract; and
- h. all overhead and profit.

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

6. You must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of the Notice to Proceed, you must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work. You must include among your staff such personnel and positions as the Contract may require.

If, in the reasonable opinion of the Commissioner, the performance of your personnel assigned to the Work is at an unacceptable level, or does not comply with the provisions of Section VIII.A, "Competency of Workers," those personnel must cease to be assigned to this Work and must return to you. You must then furnish to the Commissioner the name of a substitute person or persons in accordance with Section III.A.6. Absence of sufficient qualified personnel for the Work constitutes an event of default.

7. You must supervise and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. You are responsible for providing a finished Project that complies fully with the Contract.
8. Risk of Loss. The Work is under your charge and care until Final Completion and Acceptance of the Work by the Commissioner, unless otherwise specified in the Contract. You assume all responsibility for injury or damage to the Work by action of the elements, fire or any other causes whatsoever, including injury or damage arising from the execution or non-execution of the Work. You must rebuild, repair, restore and make good, at no additional cost to the City, all injuries or damages to any portion of your Work before Final Completion and Acceptance of the Work.
9. When the City furnishes equipment or materials to you for use or inclusion in the Work, you must safeguard all such equipment and materials as you would equipment and materials that you furnished.
10. The Work will not be considered to be completed and accepted until you receive written notice from the Commissioner confirming the Final Completion and Acceptance of the Work.



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

11. If you have any questions or concerns with respect to the Detailed Specifications or Contract drawings, you must raise them with the Commissioner.
12. Except as specified below, you must perform with your own organization and forces not less than 25% of the total amount of Work that is performed at the Project site, computed on the basis of cost. You must require each Subcontractor to become familiar with all provisions of the Contract documents that may affect Subcontractor's work.

**B. Subcontractors**

1. All rights and obligations under this Contract are by and between the City and you. Except as may otherwise be provided in the Contract, there is no privity between Subcontractors and the City. Subcontractors have no rights as third-party beneficiaries under this Contract except as may be provided in Article XXIII. You must implement such measures as may be necessary to ensure that your Subcontractors are bound by all applicable provisions of the Contract.
2. All Subcontractors are subject to the approval of the Chief Procurement Officer. You must not substitute a Subcontractor previously accepted by the Chief Procurement Officer unless the substitution is acceptable to the Chief Procurement Officer. All requests to subcontract must be submitted on a form approved by the Chief Procurement Officer.
3. You are responsible in all aspects and at all times for all Subcontractor Work.
4. Except as required under Article XXIII, you must upon request furnish the Chief Procurement Officer with one copy of each written subcontract and subsequent modifications signed by you and the Subcontractor evidencing the agreement. All subcontracts must be in writing. All subcontracts must require that (i) all Subcontractors' Work be performed in strict accordance with this Contract; and (ii) the Subcontractor is bound by and subject to the requirements of this Contract, whether or not a particular provision specifically mentions Subcontractors. Subcontracts may contain different provisions than are provided in this Contract with respect to payments, schedules, and matters not affecting the quality or timely completion of the Work under this Contract, but only if the City's rights are not thereby prejudiced. You must require each Subcontractor to enter into similar subcontracts with its Subcontractors. You must make available to each Subcontractor, before the execution of the subcontract, copies of this Contract, to which the Subcontractor will be bound pursuant to the requirements of this Section III.B.4.
5. If a subcontract provided to the City does not comply with these requirements, the City's failure to object is not a waiver of them, and you will remain liable to the City for all damages, costs, fines, losses and claims arising out of the non-compliance.
6. In the case of Work performed by Subcontractors, you must secure warranties from the Subcontractors addressed to and in favor of the City; deliver copies of them to the City upon completion of the Subcontractors' Work and; guarantee and assume full responsibility for the performance of any repair or replacement Work that may be required for the full period of the warranties provided. However, the delivery of the

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

warranties will not relieve you from any obligations assumed under this Contract. Contractor hereby collaterally assigns any or all subcontracts to the City, effective upon the City's exercise, in its sole discretion, of its right to assume such assignment as a remedy for Contractor's default or in the event of early termination. The Contractor must require each of your Subcontractors (including materialmen) to consent to a collateral assignment to the City of their 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.*

7. The City encourages Contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by § 2-92-586 of the Municipal Code, where not otherwise prohibited by Federal or State law.
8. Compliance with Multi-Project Labor Agreement (PLA). The City has entered into the PLA with various trades regarding projects as described in the PLA, which is hereby incorporated by reference. A copy of the PLA, with appendices, may be found on the City's website at <http://www.cityofchicago.org/PLA>. 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.

**C. Site Conditions and Inspection**

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the site may be provided to you by the City. Such information is not warranted by the City to be accurate. You are not entitled to rely on it. In signing this Contract you are acknowledging that when such information appears in Contract documents, prepared by the City or its Consultants, the City and its Consultants have not verified the information. Site plans do not constitute any representation by the City to you of site boundaries or characteristics.
2. You must take field measurements, verify field conditions and carefully compare those field measurements and conditions and any other information known to you with the Contract documents before commencing the Work. No allowance will be made to you for any extra labor and/or materials required due to site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the site. If land surveying Work is required under this Contract, you must have the Work performed by a land surveyor that is licensed as such by the State of Illinois.
3. If conditions are encountered at the site which are (i) subsurface or otherwise unknown or concealed physical conditions which differ materially from those indicated in the Contract; or (ii) pre-existing unknown physical conditions of an unusual nature, which

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Contract, including the presence of unanticipated Hazardous Materials, then you must provide immediate written notice to the Commissioner before proceeding with the work or disturbing those areas.

4. If the conditions differ materially from those indicated in the Contract, and cause a material increase or decrease in your cost or time required for the performance of any part of the Work, an equitable adjustment in the Contract Price or Contract Time, or both, will be made under Article XIV, "Changes in the Work."
5. You must keep on hand at the Work site, for reference, a complete set of Contract documents for the Work, copies of all plans and shop drawings, all additional and revised plans furnished by the City and all orders issued to you by the Commissioner that relate to the Work.

**D. Cleaning Up**

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

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

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

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

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

You warrant and represent that:

1. You have carefully examined and analyzed the provisions and requirements of this Contract; you have inspected the Work site(s) to the extent made available by the City; from your own analysis you have satisfied yourself as to the nature and scope of work, all conditions, any obstructions and requirements needed for the preparation of your bid and the performance of this Contract, the general and local conditions, and all other matters that in any way may affect this Contract or your performance; and the time available for the examination, analysis, inspection and investigation was adequate;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that you can and will perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract;
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the City, its officials, agents, representatives or employees, has induced you to submit a bid nor have you relied upon any, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, that may be encountered at or on the Work site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions that may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter;
4. You were given ample opportunity and time to review the Contract documents before submittal of your bid in order that you might request an addendum to the Contract documents that might correct or clarify them; you did so review the Contract documents, and every such correction or clarification has been included in this Contract or else, if omitted, you expressly relinquish the benefit of them and are willing to perform this Contract in its entirety without claiming reliance on any such omission or making any other claim on account of the omission;
5. In accordance with § 11-4-1600(e) of the Municipal Code, Contractor warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):
  - 7-28-390 Dumping on public way;
  - 7-28-440 Dumping on real estate without permit;
  - 11-4-1410 Disposal in waters prohibited;
  - 11-4-1420 Ballast tank, bilge tank or other discharge;
  - 11-4-1450 Gas manufacturing residue;
  - 11-4-1500 Treatment and disposal of solid or liquid waste;
  - 11-4-1530 Compliance with rules and regulations required;
  - 11-4-1550 Operational requirements; and
  - 11-4-1560 Screening requirements.

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

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

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

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

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

Project to which this Contract pertains, has any personal interest, direct, or indirect, in this Contract. In accordance with 41 USC § 22, no member of or delegate to the Congress of the United States will be permitted to any share or part of this Contract or to any financial benefit to arise from it, nor, under applicable laws, will any member of or delegate to the Illinois General Assembly nor any alderman of the City or City employee. Contractor warrants that its officers, directors and employees, and the officers, directors and employees of each of member if a joint venture, and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Project that would conflict in any manner or degree with the performance of the Work under this Contract. Contractor further warrants that in the performance of this Contract, no person having any such interest will be employed.

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

#### **IV. PROPERTY**

##### **A. Ownership of Property**

The City will be the owner of the Work, including any improvements, equipment and fixtures installed or constructed by 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; provided, however, that transfer of title to the City shall not relieve Contractor of any of its responsibilities under this Contract with respect to Work in Progress. Nor will the transfer of title constitute acceptance of any portion of the work.

##### **B. Ownership of Detailed Specifications and Other Contract Documents**

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

Contract Plans

10 Sets

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

Subsequent Details	10 Sets
Specifications and Contract Documents	10 Sets

2. You must obtain specifications issued by organizations other than the City to which reference is made in the City's documents at your own expense. You must also retain them at the Work site and make them accessible to the Commissioner.
3. The City is the owner of the Project. All documents, data, studies, reports, and instruments of service prepared for or by the City under this Contract are the property of the City. During the performance of your Work, you are responsible for any loss or damage to documents while in your possession or the possession of a Subcontractor and you must restore any such document so lost or damaged at your expense.

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

**C. Right of Entry**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**D. Damage to City Property**

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

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

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

**F. Final Completion and Acceptance of the Work**

When you deem the Work to be complete, you must notify the Commissioner, in writing, that the Work will be ready for an inspection and/or test on a date you specify. The notice must be given at least 15 calendar days in advance of the date. If the Commissioner concurs that the Work will be ready for inspection or testing on the date given, the Commissioner will make the inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve you of your responsibilities under the Contract. You must cooperate in all respects in the scheduling and performance of the inspection.

Final Payment at Final Completion and Acceptance of the Work. Unless expressly stated otherwise in Book 2 or Book 3, final payment will be made only when all Work, including Punch List Work, is complete and you submit to the Commissioner, within 180 calendar days or sooner from the Substantial Completion Date, a sworn affidavit stating the following:



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

1. All payrolls, invoices for materials and equipment and all other indebtedness connected with the Work for which the City might in any way be responsible have been paid or otherwise satisfied;
2. All waivers of lien required by the Contract have been provided to the Commissioner;
3. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier and others against you, the City, any agents or representatives of the City pertaining to the Work required under this Contract were provided in writing to the Commissioner and have been resolved;
4. The warranties and guarantees required by the Contract have been provided to the Commissioner;
5. All warranties and guarantees are in full force and effect;
6. The surety's written consent, signed by its authorized representative, to final payment being made directly to you is attached to the affidavit;
7. Acceptance of final payment will constitute a general release to the City, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of the City or its agents, representatives, officials and employees relating to or connected with this Contract;
8. Record Documents, including Record Drawings, Record Shop Drawings and operation and maintenance manuals have been provided to the Commissioner;
9. All other documents requested by the Commissioner have been provided; and
10. Wages paid and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

*FINAL CERTIFICATE*

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

*Signature and Title*

\_\_\_\_\_  
*Name*  
*Authorized Officer*

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

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**  
(Revised September 2018)

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

**A. Contractor's Responsibilities and Submittal Procedures**

1. Shop Drawings, Product Data, Samples are part of the Work under this Contract, and if also specified, video tape and/or photographs. You must provide them at your expense to the satisfaction of the Commissioner.
2. You must submit to the Commissioner those Shop Drawings, Product Data, Samples, video tape and photographs required for the Work involved under this Contract in accordance with the Schedule.
3. The Schedule must include a schedule of proposed submittal dates. The dates listed in the Schedule must allow sufficient time for review and processing of Shop Drawings or other data by the City and your re-submittal of them, if necessary, before you will need them to complete your performance of the Work they represent under this Contract. No extensions of time will be granted to you because of your failure to have Shop Drawings, Product Data, Samples, video tape and photographs submitted in time to allow for review, re-submittal and final review. You must also submit a separate submittal schedule (in table format), in addition to the Schedule, identifying all Submittals with submittal dates to the Commissioner for review and approval.

In preparing the Schedule, you must allow 28 days for review and 14 days for processing into and out of the office. Every reasonable effort will be made by the Commissioner to hold to the time for normal submittals.

4. You must prepare and submit proper Shop Drawings, Product Data, Samples, video tape and photographs in accordance with your contractual obligations. By submitting them, you represent that you have determined and verified all materials, field measurements, field conditions and quantities, and that you have checked and coordinated the information contained within the Submittal, including your Subcontractors' Submittals, with the requirements of the Work and of the Contract.
5. You must date and stamp all Shop Drawings, Product Data, Samples, video tape and photographs. You must also indicate on them that you have reviewed and checked them before submission and found to be in conformance with the Contract. All Submittals must be transmitted to the Commissioner. You must clearly mark each Shop Drawing, Video Tape, Product Data and Sample, in accordance with the following for purposes of identification and record:

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**  
(Revised September 2018)

***SUBMITTAL IDENTIFICATION***

Name of Project: \_\_\_\_\_

Contract Name and Number: \_\_\_\_\_

Date of Submittal: \_\_\_\_\_

Submittal Number: \_\_\_\_\_

Re submittal of Submittal Number: \_\_\_\_\_

Identification of Deviations from Contract documents: \_\_\_\_\_

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

Type of Material and Manufacturer: \_\_\_\_\_

Intended use: \_\_\_\_\_

Applicable Standards such as ASTM numbers: \_\_\_\_\_

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

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

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

6. Shop Drawings must be submitted with accurate dimensions. The Shop Drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Cross-section drawings must indicate minimum clearances and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified before submission for review.
7. The Commissioner's review and acceptance of Shop Drawings in no way relieves you from responsibility for errors or omissions that may exist in the Work or on the certified Shop Drawings. Where such errors or omissions are discovered, you must correct them at no additional cost to the City. Submittals must be sufficiently complete to allow for proper review. You must submit all Shop Drawings, Product Data, Samples, video tape and photographs to the Commissioner for review with an accompanying transmittal letter containing the above Submittal identification data and a list of items being

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

submitted. You must coordinate Submittals into logical groups or sets to facilitate review of several related items.

8. Any Submittal that in the Commissioner's sole opinion is not complete and in proper form will be returned to you without review. You must not submit as Shop Drawings duplicates or reproductions of any Contract documents issued by the City.
9. You must provide Submittals in the following quantities unless a greater number is specified elsewhere in the Contract or is required by the Commissioner:
  - a. Shop Drawings: Submit one reproducible transparency and six opaque copies of shop drawings;
  - b. Product Data: Submit six copies of Product Data;
  - c. Samples: Submit four samples; and
  - d. Video and photographs (when required under the Contract): Submit two copies of Video and photographs.
10. Before submitting Shop Drawings, Product Data, Samples, video tape and photographs, you must notify the Commissioner in writing of any deviations in the Submittals from the requirements of the Contract. If deviations from the Contract requirements are rejected by the Commissioner or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensable by a time extension.

**B. Review by the Commissioner**

1. Submittals will be reviewed by the Commissioner for compliance with the Contract. In reviewing them the Commissioner will not verify dimensions and field conditions. Any such review does not relieve you, your Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract, nor does it relieve you or them from responsibility for (i) errors of any sort in Shop Drawings, Samples and Product Data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract that may not be indicated on Shop Drawings when reviewed. You are solely responsible for any quantities that may be shown on the Shop Drawings. The Commissioner's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. You must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from the Commissioner with a stamp authorizing Work and/or delivery and installation to be performed, as described in Section V.B.3, immediately below.
3. The Commissioner will return Submittals stamped as follows:
  - a. "No Exceptions" means no changes need be made on the reviewed Submittal. You may proceed with the Work for that Submittal.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

- b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. You may proceed with the Work for that Submittal but only if you incorporate the Commissioner's comments, and/or corrections. Re-submittal is not required, but the corrections must be reflected in the Record Documents.
  - c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to proceed with the Work associated with the Submittal. You must resubmit in accordance with the reviewer's comments and/or corrections. Submittals marked in this manner must not be released for fabrication, delivery or construction.
4. If the Submittal requires revision, you must notify the Commissioner and all pertinent Subcontractors, in writing, that the reviewed set has been withdrawn.
  5. Submittals that require revisions must be corrected and resubmitted to the Commissioner to maintain the approved CPM schedule, but in no event more than five days after receipt of the Commissioner's comments.
  6. Shop Drawings: After review by the Commissioner, one reproducible stamped by the Commissioner as previously described in Section V.B.3 above will be returned to you.
  7. Submission and Review of Samples: If a considerable range of color, graining, texture or other characteristics may be anticipated in finished products, you must furnish a sufficient number of Samples of the specified materials to indicate the full range of those characteristics that will be present in the finished products. Any product delivered or erected without submission and review of full-range Samples is subject to rejection. Each tag or sticker must have clear space for your stamps and those of the Commissioner. Notice of the result of the review will be provided to you with one of the stamps indicated in Section V.B.3 above. Rejected samples will be returned. Accepted samples will be retained by the Commissioner and become the property of the City. Where color samples are required to be submitted, color samples must be submitted in the actual material that will finally be installed in the Work. The various parts of the Work must be in accordance with the reviewed and approved Samples.
  8. Product Data: After review by the Commissioner, two sets of Product Data stamped by the Commissioner as previously described will be returned to you.

**C. Source of Materials**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**D. Record Documents**

At Substantial Completion, you must deliver to the Commissioner, in suitable transfer cases clearly marked "Record Documents," all Record Drawings, Record Shop Drawings, warranties and guaranties, photographs, video Records (if any are required), Product Data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed.

**E. Record Drawings**

1. As the Work progresses, you and the Subcontractor for each trade or division of work, under your direction must keep a complete and accurate record of the following:
  - a. Changes between the Work as shown on the Contract drawings and the Shop Drawings indicating the Work as actually installed;
  - b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements that were not accurately located or changed location or elevation from that shown on the Contract drawings; and
  - c. Equipment schedules indicating manufacturers' names and model numbers installed.
2. You must record changes neatly and correctly daily on blue line prints of the Contract drawings updated daily. You must keep this record set of Contract drawings at the job site for inspection by the Commissioner. Upon completion of the Work, you must submit a final set of full-size prints to the Commissioner for review and acceptance.
3. At the time Record Drawings are delivered to the Commissioner, you and each Subcontractor must certify, in writing, that the Record Drawings are complete and accurate.

**F. Record Shop Drawings and Product Data**

1. As the work progresses, you must keep a complete and accurate record of the changes and deviations from the Work as shown on the Shop Drawings and Product Data indicating the Work performed. You must furnish Record Shop Drawings in a form and quantity acceptable to the Commissioner. Record Shop Drawings must be submitted for all items reviewed as Shop Drawings. Record Shop Drawings must be legibly drawn on sheets of Mylar or such other medium as directed by the Commissioner. Record Shop Drawings must be submitted on the same size sheets as the Contract Document drawings and include an index of all items.
2. You must furnish six record copies of Product Data in loose leaf binders. Loose leaf binders must be subdivided by Submittal numbers and must contain an index of all items.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**G. Construction Progress Photographs**

You must submit to the Commissioner construction progress photographs consisting of exterior and interior views of the Work, with the date and location of the photographs as selected and directed by the City. If requested at any time by the Commissioner, you must use digital photography, at the resolution specified by the Commissioner. You must provide three prints of each view to the Commissioner within five days of taking the photographs. If digital photography is not requested or until it is requested, then you must provide each photograph on an 8" x 10" smooth surface, glossy, black and white print, on single-weight commercial-grade stock. The 1" wide margin, which is punched for a standard 3-ring binder, will have a left-sided margin for vertical shots and a top-sided margin for horizontal shots. A label will be included on the front bottom margin, which will contain the project name and date that the photograph was taken. On the back of each print, you must provide an applied label or rubber stamp impression with the following information:

1. Name of the Project;
2. Name and address of the photographer;
3. Name of the Architect ;
4. Your name;
5. Date the photograph was taken;
6. Description of vantage point , in terms of location, direction (by compass point), and elevation or level of construction.
7. Notation of vantage point marked for location and direction of shot on a key plan of the site and building, with elevation (story height) noted.

The photographs must be taken monthly, coinciding with the cutoff date associated with each application for payment. From time-to-time the City may issue a request for additional photographs, in addition to the periodic photographs specified. Additional photographs are not included in the Contract Price and will be paid for by Change Order.

**H. Instructions, Parts List and Operation and Maintenance Manuals**

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

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

**I. Adjustment of Equipment**

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

**J. Project Account Records**

**1. Project Data and Records**

- a. You and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers and mechanics employed by them in connection with the Work. The record must be open at all reasonable hours to the inspection of the Commissioner and to the Director of Labor of the State of Illinois and his deputies and agents. You also must furnish the Commissioner and the Chief Procurement Officer with certified copies of the payrolls, in accordance with Section XIII.B.3.d.
- b. You must furnish to the Commissioner upon request a written statement, verified by affidavit, giving the names and addresses of all persons, firms and corporations who have up to that date furnished labor or materials in the performance of the Contract and the amounts due or to become due them.
- c. You and all Subcontractors must furnish the Commissioner with such information as the Commissioner may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution and any other information that the Commissioner may require. You must, on request, furnish the Commissioner with copies of delivery tickets and invoices, in triplicate, covering the expenditures on the Contract.

**2. Audits**

- a. You and your Subcontractors must furnish the Commissioner such information as he may request regarding the progress, execution, and cost of the Work. You must maintain complete records showing actual time devoted and costs incurred, adopting accounting procedures and practices sufficient to record properly all costs of



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the Work. This system of accounting must accord with generally accepted accounting principles and practices, consistently applied throughout. You must maintain its books, records, documents and other such evidence for five years after final payment.

- b. All books and accounts you and your Subcontractors are required to keep in connection with the Work under this Contract must be open to inspection and audit by authorized representatives of the City at reasonable times during the performance of the Work, and they must be retained in a safe place and available for inspection and audit during the five-year period after final payment, as provided above. No provision in this Contract granting the City a right of access to records and documents is intended to impair, limit, or affect any right of access to such records and documents that the City would have had in the absence of such provisions.
- c. If the City, in its sole discretion, chooses to conduct an audit either during the performance of the Work or in the five-year period after final payment, each audited calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that you or any of your Subcontractors have overcharged the City in the audited period, the City will notify you. You must then promptly reimburse the City for any amounts the City has paid you due to the overcharges and also some or all of the cost of the audit, as follows:
  - (1) If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Contract Prices, of the goods, work, or services provided in the audited period, then you must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;
  - (2) If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Contract Prices, of the goods, work, or services provided in the audited period, then you must reimburse the City for the full cost of the audit and of each subsequent audit.
- d. Your failure to reimburse the City in accordance with V.J.2.c above is an event of default under this Contract, and you will be liable for all of the City's cost of collection, including any court cost and attorneys' fees.

**3. Confidentiality**

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

**4. 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 by the Contract.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**VI. ASSIGNMENT**

**A. Assignment of Contract by Contractor**

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

**B. Assignment of Funds or Claims by Contractor**

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

**C. Assignment of Contract by City**

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

**D. Assigns**

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

**E. Requests to Subcontract**

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

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

**A. Standard of Performance**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**B. Correction of Work**

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

**C. Materials and Equipment**

1. Quality of Materials. Unless otherwise specified in the Contract you must use all new materials for the Project and use them in such a manner as to produce completed Work that conforms with the Contract and is acceptable in every detail to the Commissioner.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

Only materials that conform to the requirements of these specifications may be incorporated or used in the Work. In the absence of a definite specification, materials must be the best of their respective kind with properties best suited to the Work required.

2. **Materials Inspection and Responsibility.** Before any material is incorporated into the Work, you must submit a "Request for Materials Inspection" to the Commissioner. You are solely responsible for submitting the requests with sufficient time for the City to conduct its inspection. You are not entitled to payment for uninspected materials. The City has the right to inspect any material to be used in carrying out this Contract. The City does not assume any responsibility for the availability of any materials or equipment required under this Contract. By performing any tests or accepting any materials, the City in no way relieves you of any of your obligations or responsibility under this Contract. Materials, components or completed Work that do not comply with the Detailed Specifications and other requirements of this Contract may be rejected by the City, and you must replace them at no additional cost to the City. After you receive notice from the City that materials or components have been rejected, you must promptly remove them from the City's premises at no additional cost to the City.

**D. Substitution of Materials**

1. The City will consider your request for substitution in cases of product unavailability or other conditions beyond your control.
2. You must submit each request for substitution separately and each must include:
  - a. Complete data substantiating compliance of proposed substitution with requirements stated in the Contract;
    - (1) Product identification, including manufacturer's name and address
    - (2) Manufacturer's literature identifying:
      - (a) Product description
      - (b) Reference standards
      - (c) Performance and test data
    - (3) Samples, as applicable
    - (4) Names and address of similar projects on which the product has been used, and date of each installation;
  - b. Itemized comparison of the proposed substitution with product specified that lists significant variations;
  - c. Data relating to changes in the Schedule;
  - d. Any effect of substitution on other parts of the Work, any Subcontractors, or any separate contracts;
  - e. List of changes required in other Work or products;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

- f. Accurate cost data comparing proposed substitution with product specified, including the amount of any net change to Contract Price;
  - g. Designation of required license fees or royalties; and
  - h. Designation of availability of maintenance services, sources of replacement materials.
3. When you make a formal request for substitution make you are warranting and representing that:
- a. The proposed substitution is equivalent to or superior in all respects to the product specified;
  - b. The same warranties and guarantees will be provided for the substitute as for the product specified; and
  - c. You will coordinate the installation of accepted substitutes into the Work and will make such changes as may be required for the Work to be complete in all respects.
4. If evidence you present does not, in the sole opinion of the Commissioner, provide a sufficient basis for reasonable certainty that the proposed substitution or deviations will provide a quality, result, function, and esthetic appearance, among other attributes, at least equal to that attainable by the specified product, the Commissioner may reject the substitution or deviation without further investigation.
5. The Commissioner will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Commissioner will not approve proposed substitutes as equal to items specified that, in the Commissioner's opinion, would be unharmonious, or otherwise inconsistent with the character, quality or design of the Project.
6. You must bear any additional cost, or any loss or damage, arising from the substitution of any material or method for those specified, including the cost for damages incurred by other contractors notwithstanding approval or acceptance of the substitution by the Commissioner, unless the substitution was initiated by the written request or direction of the Commissioner.
7. The investigation review and approval of substitute materials requires a minimum of 30 days beyond that required for specified routine items. No request for a delay or disruption will be allowed whether or not the substitution is granted.
8. Approval by the Commissioner of a substitution of material will be given in a Contract modification as required in Article XIV, "Changes in the Work."

**E. Warranties**

1. You warrant all Work furnished under this Contract against defective materials and workmanship, improper performance and non-compliance with the Contract for a period of one year after the date of Final Completion and Acceptance of the Work ("Warranty Period"), except as otherwise specifically stated in other parts of the Contract or within such longer periods of time as may be provided by law or by the manufacturer, which

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

periods will then become the Warranty Period as applicable. Your warranty will be in addition to any Manufacturers' Warranties.

2. Your written warranty will include the name of the project as designated in the Contract, be signed by an officer of the company having authority to provide the warranty, and state: "This document serves as a one - year written warranty for the Work performed, and material and equipment installed on the above referenced project. This warranty incorporates all provisions of the Contract that refer or relates to the warranty. This warranty begins on (date) ."
3. During the Warranty Period, you must repair and replace at your own expense, when so ordered by the Chief Procurement Officer or the Commissioner, all Work that may develop defects whether these defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material that is so repaired or replaced will have the Warranty Period extended for a period of one year from the date of the last repair or replacement.
4. You must bear all costs associated with any repair or replacement under this section, including removal, material, transportation, and reinstallation.
5. Manufacturer's Warranties
  - a. You must:
    - (1) ensure that all required Manufacturer's Warranties pass through to the City and the Department;
    - (2) submit all applicable manufacturers' warranties to the Commissioner and ensure that all warranty forms have been completed in the Department's name and registered with the appropriate manufacturers.
  - b. Whenever you make repairs or provide replacements under Section VII.E.3, you must provide a manufacturer's warranty for the repaired or replaced Work, if standard with the manufacturer, in addition to your warranty under Section VII.E.2.

**VIII. PERSONNEL**

**A. Competency of Workers**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**B. Supervision and Superintendence**

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

**C. Contractor's Project Personnel**

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

**D. Key Personnel**

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

Changes in the assignment of any key personnel due to commitments not related to this Contract are prohibited without Commissioner's approval. If any key personnel, selected in accordance with the key personnel provisions under this section of the Contract, should become unable to continue in the performance of the assigned duties for reasons due to death, disability or termination, you must promptly notify the Commissioner and explain the circumstances.

Under a request by Commissioner, you must provide to the Commissioner, within seven 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, the substitute person will be assigned to the project. If the Commissioner rejects the substitute, you will have seven days after that to provide the name a second substitute person, with any information the Commissioner may require, until a proposed replacement has been approved by the Commissioner.

**E. Davis-Bacon Prevailing Wages**

The Contractor agrees to comply and assures compliance with the requirements of 49 U.S.C. 5333(a), the Davis-Bacon Act, 40 U.S.C. 276 a(7), and implementing U.S. DOL regulation, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5. In addition to other requirements that may apply, the Contractor agrees to pay wages to laborers and mechanics performing contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. The Contractor agrees to place a copy of the current prevailing wage determination issued by the U.S. DOL in each solicitation for Subcontractor work under the Project, and agrees to refrain from awarding any affected subcontract until the subcontractor agrees to the required wage determination. The

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

Contractor further agrees to report to the federal department of Housing and Urban Development every suspected or reported violation of the Davis-Bacon Act or its Federal implementing regulations.

**F. 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.

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, 2020 is \$14.15 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 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 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.



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(Revised September 2018)

**G. INTENTIONALLY OMITTED**

**H. Working hours in city contracts**

Eight hours constitutes a legal day's work under this Contract, in accordance with § 2-92-220 of the Municipal Code of Chicago.

**IX. PERMITS AND LICENSES**

**A. Contractor Obtains Permits**

Except for the three types specified below, you must obtain all permits wherever the Work under this Contract requires them, including from the City of Chicago or other public authorities. You must furnish triplicate copies of the permits to the City before the Work covered by them is started. **NO WORK IS ALLOWED TO PROCEED BEFORE SUCH PERMITS ARE OBTAINED.**

The City will obtain permits required from the Metropolitan Water Reclamation District of Greater Chicago, the Illinois Division of Waterways and the U.S. Army Corps of Engineers.

**B. Contractor Pays Permit Fees**

The special use of, or removal, alteration or replacement of certain City-owned facilities and appurtenances such as traffic signs, parking meters, trees, sewers, hydrants, bridges and viaducts which are required for you to perform your Work are subject to all applicable Municipal Ordinances. It is your responsibility to obtain all the necessary permits and pay the associated fees. You must furnish copies of the permits to the City before the Work covered is started. Information with regard to the above may be obtained by contacting the appropriate City Departments.

**C. Occupancy Placard and Fees**

You must provide an occupancy placard indicating occupancy and floor plans based upon key plans provided by the Architect. It is your responsibility to pay all fees and expenses related to providing the occupancy placard.

**X. COORDINATION WITH OTHER CITY DEPARTMENTS**

**A. Water System Work and Usage**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**B. Sewer System Work**

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

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

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

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

**C. Parking Meter Removal and Replacement**

The City via the metered parking concessionaire shall close or remove and opened or reinstall any parking meters, including signs indicating pay boxes, as may be required. However, you must pay all fees and lost meter revenues required by § 9-68-050 of the Chicago Municipal Code. You must advise the Department of Transportation, Bureau of Inspections, Construction Compliance Section (Public Way Permits), Room 804, City Hall, Chicago, Illinois 60602, in writing at least two weeks in advance of the closure citing the location and meter number of the meters to be closed or removed. Closures of less than 6 hours on a given day and limited to less than 10 business days are strongly encouraged, and you must be prepared to detail any reason requiring closures of a longer hourly and daily duration.

You may not remove any parking meters without the express written consent of the Commissioner. If you violate this provision, you (a) recognize that the City will suffer damages as a result, including the costs incurred by the City in tracking, retrieving, and repairing damage to the parking meters, and (b) will be liable for liquidated damages in the amount of \$350 for each single-space parking meter or \$10,000 for each pay box you removed. All amounts, including any other debts, will be deducted from any amounts due or that may become due you.

Notification must be provided immediately once meters can be opened or reinstalled. That notification must be e-mailed to the Department of Revenue at [parking-meter-closure@](mailto:parking-meter-closure@)

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

[cityofchicago.org](http://cityofchicago.org). Please include "REOPEN/REINSTALL" in the subject line and provide details concerning permit numbers, locations, and dates that the meters may be opened or reinstalled.

The City of Chicago Department of Transportation and the Department of Revenue may modify these requirements in the future.

**D. Traffic and Parking Sign Removal and Replacement**

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

**E. Trees**

In accordance with § 10-32-060 *et seq.* of the Municipal Code, you must obtain a permit from the Bureau of Forestry when removing planting, trimming, spraying, or in anyway affecting the general health or structure of trees in the public way. There is no fee for this permit. The permit must be obtained from the **Bureau of Forestry Permits Division; 3200 S. Kedzie, Chicago, Illinois 60623; (312)747-2098, fax (312) 747-2178.**

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

**F. Demolition**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**XI. SCHEDULE**

**A. Time**

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

**B. Progress Schedule**

1. You must begin performance of the Work and to prosecute it with all due diligence, so as to complete the entire Work under this Contract within the Contract Time stipulated, after the date of commencement of Work, as specified in the written Notice to Proceed to you. The date for the commencement of Work is not counted as a day, but each day after that, from midnight to midnight, is counted as one day and the last day counted is the date of Final Acceptance and Completion of the Work. You must, when necessary, use overtime, multiple shifts, weekend and/or holiday work to maintain the approved schedule at no additional cost to the City.
2. Except when otherwise specified by the Commissioner, you must provide the progress schedule ("Schedule") for the Work using the Critical Path Method ("CPM") as described in Section XI.D, "Critical Path Method Schedule," below.
3. The Commissioner's approval of your Schedule is done for the sole purpose of insuring that all CPM scheduling documents you prepare are in conformance with the Contract requirements. This approval does not relieve you of the responsibility for the means, methods, procedures and sequence of the construction process nor does it entitle you to additional funds for completing Work in a period that is less than the Contract Time.
4. Daily Progress Reports: You and all Subcontractors must prepare and submit to the Commissioner daily progress reports on the various parts of the Work, including in the report the number of workers and the classification of the trades involved, equipment used and any pertinent information regarding possible delays in the Work.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**C. Construction Operations Plan**

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

**D. Critical Path Method ("CPM") Schedule**

1. You must format the Schedule to show the proposed starting and completion date for the various stages of the Work, including any float time, and must prepare it in such a way that it can be used to plot actual progress against proposed progress. You must update the Schedule and submit it to the Commissioner no less than monthly or as directed by the Commissioner. The Commissioner may request more frequent Submittals. Monthly payment will be withheld for failure to submit updated Schedules. One copy of the Schedule must be submitted to the Commissioner in a reproducible format. A copy of the Schedule must be submitted on a computer diskette in a format acceptable to the Commissioner.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- a. Activity numbers assigned to the related portions of Work in the format of the project specification division and section numbers. You must submit the activity numbers to the Commissioner for review and approval;
  - b. A description of the activity that is sufficiently detailed to permit an evaluation of your performance of the Work described;
  - c. Duration of the activity in days, unless otherwise noted;
  - d. Responsibility code for each activity that is not performed by you, indicating which Subcontractor, supplier, fabricator, or other contractor is to perform the activity;
  - e. Each activity must be identified with early/late start, early/late finish, and total float;
  - f. A breakdown by monthly node of dollar amount and percentage of Contract Price.
5. In addition to the above, any activity whose start or finish dates has been specified elsewhere in the Contract must be shown as the specified dates in the Schedule.
6. The following information must be furnished on the Schedule as summary items:
- a. The projected total percentage complete, on a monthly basis;
  - b. Anticipated total partial payments, on a monthly basis, including Subcontractor payment breakdown; and
  - c. The projected total manpower requirements, on a weekly basis.
  - d. Within 14 days after receipt of the detailed Schedule and supporting documents, the Commissioner will either approve the Schedule or reject it with written comments. If the Schedule is rejected, you must submit a revised Schedule within seven calendar days of the date of rejection. The Commissioner's decision to reject the Schedule is final and you may not dispute it under Article XIX of the Contract.
  - e. You must provide prompt written notice to the Commissioner of any events or other changes that may delay or accelerate the Schedule.
  - f. If you fail to provide the Schedule within the time prescribed and/or updates within the stated time frames, it is an event of default under the Contract, and the Commissioner may, in addition to any other remedies available to the City, withhold monthly partial payments until such time as you submit the required information.
7. Changes to the Schedule
- a. If you propose to make any changes to the Schedule, you must provide the Commissioner notice of the proposed changes, in writing, stating the reasons for the change, identifying each changed activity (including durations and interrelationships between activities) and providing a diskette of the proposed changed Schedule.
  - b. The originally approved Schedule will be the Baseline Schedule. The Commissioner, in his sole discretion, may approve or disapprove the proposed change in the Schedule to the extent that the change does not extend the Contract Time. He will provide a decision in writing to you within 10 days of receipt of your submission. All

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

monthly updates must be plotted against the current revision of the Baseline Schedule.

- c. If the Commissioner approves the change to the CPM Schedule you must submit a revised Schedule incorporating the change(s) within 10 days after approval along with a written description of the change(s) to the Schedule.
  - d. Any proposed change that would result in an extension of Contract Time requires a written modification of the Contract pursuant to Section XIII.B, "Modifications," of the Contract.
8. Updating. The originally approved CPM will be designated as the Baseline Schedule and will only be changed based on a Contract Modification that extends the Contract duration.
- a. All updates will be plotted against the Baseline Schedule. You must update the CPM Schedule on a monthly basis coincident with the submission of the pay estimate. The updated information must include the Baseline Schedule detail and the following additional information for each activity:
    - (1) Actual start dates;
    - (2) Actual finish dates;
    - (3) Actual activity percent complete;
    - (4) Remaining duration of activities in progress; and
    - (5) Critical activities must be identified or highlighted.
  - b. The updated information must include the Baseline Schedule detail and the following additional information for each summary item:
    - (1) Actual monthly and total-to-date Work percentage complete.
    - (2) Actual monthly partial payments, including Subcontractor partial payments; and
    - (3) Actual weekly and total-to-date manpower utilization.
  - c. The City may withhold partial payments if you do not submit updates as required.
9. Neither an update nor Schedule change may, in itself, extend the term of this Contract. The term of the Contract may only be extended by a written Contract Modification executed pursuant to Section XXIII.B, "Modifications," of the Contract.
10. Narrative Report. As part of the CPM Schedule update, you must prepare a written narrative report, highlighting the progress during the past update period. This written report must include the following information:
- a. Summary of Work accomplished during the past update period;
  - b. Contract milestone comparison chart;
  - c. Analysis of critical path(s);
  - d. Analysis of time lost/gained during the update period;



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- e. Identification of problem areas; and
  - f. Recommended solutions to current problems.
11. You are required to attend a monthly CPM Schedule review meeting where the Schedule will be reviewed with the Commissioner. The purpose of this meeting is to review past progress, current status, problem areas and future progress. Your narrative report is reviewed at this meeting. Your representatives attending this meeting must have the authority to commit manpower and/or other resources to correct any negative impact to the Schedule. Any possible means of shortening the Schedule at no additional cost will be brought to the attention of the Commissioner. The Updated Progress Schedule will be used as a guide for verifying estimates of work completed for which payment is requested, and must accurately represent the project's current status. None of the information provided in this Section constitutes a request for a time extension.

**E. Recovery Schedule**

1. You must maintain an adequate work force and the necessary materials, supplies and equipment to meet the current approved Schedule. If you, in the sole opinion of the Commissioner, are failing to meet the approved Schedule, including any Contract milestones, you must submit a recovery Schedule (the "CPM Recovery Schedule"). The CPM Recovery Schedule sets forth a plan to eliminate the schedule slippage (negative float). The plan must be specific and show the methods to achieve the recovery of time, e.g., increasing manpower, working overtime, weekend work, employing multiple shifts. You must bear all costs associated with implementing the CPM Recovery Schedule.
2. Upon receipt of the CPM Recovery Schedule, the Commissioner will review it for conformance with the Contract and degree of detail. The Commissioner, within 14 days after receipt of the CPM Recovery Schedule and supporting documents will approve it or reject it with written comments. If the detailed CPM Recovery Schedule is rejected, you must submit a revised CPM Recovery Schedule within seven calendar days after the date of rejection. The Commissioner's decision to reject the CPM Recovery Schedule is final and you may not dispute it.
3. If you refuse to follow the direction of the Commissioner, the Commissioner reserves the right after seven days written notice to you, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it and charge the cost to you. The Commissioner's rights under this provision are cumulative to rights under any other provisions of the Contract including the City's rights to terminate for default or to early termination.

**F. Time for Completing Punch List**

1. TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK, and you must begin work immediately after receipt of a list of minor miscellaneous or finishing work known as

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

"Punch List Work." Your failure or that of your Subcontractors to begin the Punch List work within three days of receipt of the Punch List is an event of default.

2. You must diligently prosecute the Punch List work once begun and complete it within 30 days from receipt of the Punch List. If you fail to complete Punch List work within the 30 day time period, you must pay the liquidated damages set forth for "Punch List Work" in Book 2.
3. If liquidated damages are assessed, they will be added to the previously determined liquidated damages assessed as of the Substantial Completion Date or the City's beneficial occupancy of the Project, whichever occurs earlier. The City's takeover of the Project under Section XXI.C.3.b., however, does not constitute beneficial occupancy for purposes of liquidated damages.

**G. No Damages for Delay; Extensions of Time**

1. Should you be delayed in starting, prosecuting or completing the Work by any act of the City, including a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the City, or by order of the City, or anyone employed by or acting on behalf of the City, or by any cause beyond your control, none of which are due to any fault, neglect, act or omission on your part, then your relief is limited to an extension of the Contract Time that is no greater than the duration of any such delay. The extension of time releases and discharges the City, its employees, officials, agents and representatives from all claims for damages of whatever character, including any claims you may make on account of disruption, changes in sequence, interference, inefficiency, direct or indirect cost or any other causes of delay.
2. You must notify the Commissioner in writing of the cause within five calendar days after the delay begins. Consideration of a time extension for events beyond your reasonable control will be made if the delay directly impacts the Schedule for completion of the Work. Events considered to be beyond your reasonable control are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, freight embargoes, or weather significantly more severe than the norm, but only if the listed causes were not foreseeable and did not result from your fault or negligence and only if you took reasonable precautions to prevent delays owing to such causes.
3. Unless otherwise provided in the Contract, the Contract Time is based on normal weather conditions. An extension is granted for weather significantly more severe than the norm only if you demonstrate to the satisfaction of the City that any delay in the progress of the Work was due to such weather. The basis used to define normal weather will be the "normal" data as compiled by the United States Department of Commerce, National Oceanic and Atmospheric Administration in their most current report entitled "Local Climatological Data, Annual Summary with Comparative Data" for the month for which the time extension is sought. The effects of weather less severe than the norm may be taken into account in considering your requests for time extensions for the effects of more severe weather.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

4. No extension of time will be granted under this Section for any delay if you, by your action or inaction, including your fault or negligence or that of your Subcontractors, caused the delay, or for which any remedies are provided under any other provision of the Contract.
5. The grant of an extension of time pursuant to this Section XI.G, "No Damages for Delay and Extension of Time," in no way constitutes a waiver by the City of any rights or remedies existing under this Contract, at law or in equity.
6. You must submit in writing any claim for extension of time to the Commissioner not more than five days after the delay begins, otherwise the claim is waived. Any claim for extension of time must (i) state the cause of the delay; (ii) specifically demonstrate the impact of the delay on the Schedule; and (iii) state the number of extension days requested. If the cause of the delay is continuing, only one claim is necessary, but you must report, in writing, the cessation of the cause for the delay within 10 days after the termination. Any claim for extension of time that does not comply with this provision constitutes a waiver by you of your rights to any such extension.
7. After receipt of a timely and properly completed request for a time extension, the City may (i) grant a time extension for the entire length of the delay; (ii) grant a time extension for a portion of the extent of the delay; or (iii) deny the time extension.
8. If you do not agree with the City's decision on a claim for time extension, you may appeal the ruling to the Chief Procurement Officer under Article XIX, "Claims and Disputes," but only if you have complied with the notice requirements provided in these Terms and Conditions for Construction and the time extension request exceeds five calendar days or the liquidated damages exceed \$10,000. The Commissioner's decision is final whenever the time extension request is for a duration of less than five days or the liquidated damages are less than \$10,000.

**H. Suspension of Work**

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

**I. Liquidated Damages**

1. If the Work is delayed, you are liable for liquidated damages for every day you fail to achieve the Contract Completion Date (or any milestone completion date that provides for liquidated damages), but only if the delay is not the result of an excusable cause permitted under Section XI.G.2, "No Damages for Delay and Extensions of Time." The

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

specific amount of liquidated damages for which you are liable is set forth in Book 2 of this Contract.

2. The City will recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due you. If the moneys are insufficient to cover the damages, then you or your surety must pay the amount due. Nothing contained in this Section is to be construed as limiting the right of the City to recover from you all amounts due or to become due, and all costs and expenses sustained by the City for improper performance under this Contract, repudiation of the Contract, failure to begin work on the date of commencement, or failure to perform the Work with adequate forces, equipment or materials or other resources, or breaches in any other respect, including defective workmanship or materials. In addition to liquidated damages for failure to meet any milestones, you are liable to the City for any other damages sustained as the result of your refusal or failure to perform the Work.
3. If the City permits you to continue to perform Work despite your failure to meet any milestone date set forth in the Contract, the action in no way constitutes a waiver by the City of any rights or remedies that exist under this Contract, at law, or in equity.

**XII. MEETINGS**

**A. Pre-Construction Meeting**

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

**B. Weekly Review Meetings**

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

8. Coordination requirements;
9. Clarifications and decisions required of the Commissioner;
10. Review of your forces on the Work; and
11. Review of Project Record Document status and content.

**C. Monthly Review Meetings**

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

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

**XIII. PAYMENTS**

**A. Contract Price**

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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

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

1. You and the City will agree upon a payment schedule of at least once per month, or more frequently if appropriate or if specified elsewhere in the Contract. The Commissioner will process payment requests pursuant to that agreement if your payment requests, in the Commissioner's sole judgment, are acceptable in form and content, and if the Work for which payment is being requested has been completed according to the terms and conditions of this Contract. All payment requests are subject to correction by the Commissioner.
2. In cases where you proceed to perform and complete the Work properly under the Contract, progress payments will be processed on a monthly basis unless the amount earned is greater than \$1,000,000, then payments may be made twice a month. The payment period ends on the monthly anniversary date of the Notice to Proceed.
3. Each monthly payment request must include one original and two copies of the following:
  - a. Certified Statement. You must submit certified statement(s) (signed by an authorized individual and notarized) for each payment request; the statement, in the form acceptable to the Commissioner, must list the following for you and for each Subcontractor and supplier for the period for which payment is requested:
    - (1) the name and business address of the particular Subcontractor or supplier;
    - (2) description of the work performed and/or product supplied;
    - (3) [intentionally omitted]
    - (4) the total amount of the particular subcontract;
    - (5) the amount previously paid to the Subcontractor and the dates paid;
    - (6) the amount of the monthly pay request you will pay to each individual Subcontractor and/or supplier from payments you receive on the request, and the dates those amounts were invoiced or requested by the Subcontractor or supplier;
    - (7) the balance remaining under the subcontract to complete the Work.
  - b. Partial Waivers of Lien to Date and Affidavit for Payment. Following your first payment request, you must submit Partial Waivers of Lien from all Subcontractors and suppliers that performed services and provided supplies during the month before your previous payment request. The Partial Waivers of Lien must be in a form acceptable to the City and must identify, at a minimum, the payment request number and time period covered. The Partial Wavier of Lien must be in dollar amount equal to the dollar amount of the services performed or supplies provided by the Subcontractor or supplier during the relevant time period. With every payment request, you must also submit an Affidavit for Payment from all Subcontractors and suppliers for whose services or supplies you request payment. The Affidavit for

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

payment must be in a form acceptable to the Commissioner and identify, at a minimum, the payment estimate number, the time period covered, and the total amount invoiced by the Subcontractor or supplier, and the total amount paid to the Subcontractor or supplier to date; and

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

**C. Payment for Stored Material**

- 1. Whether stored on- or off-the job site, the risk of loss for stored material will remain with you, and you must insure the stored materials against the risk of loss, theft or damage until its installment in the Work.
- 2. Payment for material stored on the job site will be 100% of a valid invoice. No payment will be made for materials stored off the job site unless otherwise authorized by the Commissioner in accordance with Section XIII.C.3. If Materials stored on the job site cannot be incorporated in the finished Work within a reasonable period of time you may include them in the monthly progress payment, but only if the following documents are submitted with the request for payment:
  - a. Paid invoices showing the cost of material or equipment;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- b. Waiver of lien from the supplier indicating that the cost of the material or equipment was paid; and
  - c. Inspection tickets showing that material or equipment had been inspected and accepted by the City.
3. Payment for material stored off-site, if authorized, will be 100% of a valid invoice when you have provided the Commissioner with the documents and assurances listed and complied with the requirements below:
- a. A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs;
  - b. A waiver of lien from the supplier for the total amount of the material purchased;
  - c. Inspection for all of the material stored;
  - d. A certified statement giving the exact location of the materials or equipment, stating that:
    - (1) you have inspected all of the material stored and that it is complete and in good condition;
    - (2) the materials are suitably stored and maintained at a bonded, secure and environmentally appropriate location that the Commissioner has agreed upon and subject to the conditions required or established by him;
    - (3) you have complied with procedures satisfactory to the Commissioner to establish the City's title to the materials or otherwise protect the City's interest in them, including, insurance, storage and transportation to the Project site for the materials stored off-site, as the Commissioner may reasonably require;
    - (4) the materials, equipment and associated fabricated components will not be diverted away from the Project;
    - (5) a certificate of insurance coverage for the stored material upon which payment is requested;
  - e. Immediately upon receipt of payment for the material, you must prepare and execute all documents required to transfer title to the City, including, any Uniform Commercial Code documentation necessary to perfect transfer of title; and
  - f. All material and Work covered by payments will thereupon become the sole property of the City, subject to your obligation to insure it until Acceptance of the Work.

**D. Retainage**

1. Pursuant to § 2-92-250 of the Municipal Code, no retainage shall be withheld by the City. As a matter of prompt payment to subcontractors as required by Section XIII.E, Contractor must not withhold retainage from subcontractors in any form, including but not limited to administrative fees.



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**E. Prompt Payment to Subcontractors**

1. Payment Within Seven Days. The Contractor must make payment to its Subcontractors **within 7 days** of receipt of payment from the City for each invoice.

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

2. 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.

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_to_Promptly_Pay_Fillable_Form_3_2013.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.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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

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 XX.C 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.

5. Whistleblower Protection. Contractor shall not take any retaliatory action against any subcontractor for reporting non-payment pursuant to this Section E. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth in Section XX.C hereof, including termination. In addition to those remedies, any retaliatory

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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.

6. 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 E. 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.

**F. Payments Withheld**

1. The Commissioner may decline a request for payment if, in the Commissioner's sole opinion, the request for payment is not adequately supported. If you and the Commissioner cannot agree on a revised amount, the Commissioner must process the payment in the amount he deems appropriate.
2. The Commissioner may decline to process any payment or may rescind in whole or in part any approval previously made to the extent that may be necessary in his sole opinion because of any failure to perform any obligation under the Contract, including:
  - a. Failure or refusal to provide the City the required initial schedule for the Work or monthly schedule updates and obtain the City's approval for either or both;
  - b. Your failure to remedy defective Work;
  - c. Your failure to make payments to Subcontractors, or employees, or provide partial waivers of lien;
  - d. Your failure to maintain timely progress of the Work as stated in your schedule, or the City's determination that the Work will not be completed within the Contract Time, or your failure to carry out the Work in accordance with the Contract;
  - e. Failure to follow the City, State, Federal, or Contract safety and security requirements;
  - f. Failure to maintain insurance policies as required by the Contract and/or to provide to the Commissioner each evidence of insurance coverage, in the form of current certificates of insurance, as he or she may require;
  - g. Failure to comply with other requirements as referenced in the Contract;
  - h. Failure to provide certified payrolls or other documents required under Section XI.G, "No Damages for Delay and Extensions of Time."
  - i. Failure to provide material inspections as required by the Contract; and
  - j. Failure to provide contract deliverables such as, accurate Record Drawings, warranties, guarantees, manuals, etc.
3. Pursuant to § 2-92-270 of the Municipal Code, the Chief Procurement Officer may, in his sole discretion, direct that no further payments be made, or vouchers or estimates

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

issued to you, if he determines that you have failed to pay any Subcontractor, employee or worker for Work performed under this Contract. The City may withhold payment until you demonstrate, to the satisfaction of the Chief Procurement Officer, that payments to the Subcontractors, employees or workers have been made in full.

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

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

**4. Debts; Outstanding Parking Violation Complaints**

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

**5. Provisions Relating to Liens**

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

If any of Subcontractors, employees, officials, agents, or any other person directly or indirectly acting for, through, or on their behalf files or maintains a lien or claim under the Illinois Mechanic's Lien Act, 770 ILCS 60/23, *et seq.*, against public funds or against any monies due or to become due to Contractor on account of any Work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

Project, Contractor must cause such liens and claims to be satisfied, removed, or discharged within 30 days from the date of filing. The City may extend the 30 day period if (i) the City determines that the lien claim cannot be so satisfied, removed, or discharged in such period and (ii) Contractor, in the City's sole determination, is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged. The City has the right, in addition to all other rights and remedies provided under this Contract or by law, to cause such liens or claims to be satisfied, removed, or discharged by any means at Contractor's sole cost, such cost to include reasonable legal fees.

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

**G. Payment for Changes**

1. Payment for Changes. The amount to be paid by the City for changes (additions, deletions or revisions) in the Work or directions to change the Contract Time, will be made in accordance with Sections XIII.G.1.a through XIII.G.1.f below.
  - a. **Unit Price Basis.** Should the changes in the plans result in an increase or decrease in the quantities of unit priced Work to be performed, you will accept payment as follows:
    - (1) All increases in the Work of the type that appears in the Contract as unit price items will, except as provided in Section XIII.G.1.b., "Proposal Basis," be paid for at the Contract unit bid prices. Decreases in quantities included in the Contract will be deducted from the Contract value at the unit bid prices. No allowances will be made for delays or anticipated profits.
    - (2) Quantities in excess of 125% of the bid quantities, when the total dollar value of the unit price item exceeds 5% of the original Contract bid amount, will be paid for at a negotiated unit price based on costs that are demonstrated by you and agreed to by the Commissioner, subject to the approval of the Chief Procurement Officer. The negotiated unit price can be higher or lower than the Bid Unit Price. Quantities in excess of 125% of the bid quantities, when the total dollar value on any unit price item does not exceed 5% of the total value of the original Contract bid amount, will be paid at the bid unit price.
    - (3) Quantities below 75% of the bid quantities, when the total value of the unit price item exceeds 5% of the Contract Price at the time of bid, will be paid for at a negotiated unit price based on costs which are demonstrated by you and agreed to by the Commissioner, subject to the approval of the Chief Procurement Officer. The negotiated unit price can be higher or lower than the Bid Unit Price. Quantities below 75% of the bid quantities, when the total value on any unit price item does not exceed 5% of the total value of the Contract Price at the time of bid will be paid at the bid unit price.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- (4) If the Commissioner and you are unable to agree on a negotiated unit price, the Commissioner will determine a unit price, prepare a Contract Modification with the Work so priced, that you will sign. You may, however, timely dispute the amount of the unit price to the Chief Procurement Officer under Article XIX, "Claims and Disputes." This is the only Contract Modification in which the release language required by Section XIV.D., "Contractor's Release," will not be included.
- b. **Proposal Basis.** If there are no unit prices for the changed Work, the payment may be based upon a price agreed to by the City and you. The proposal submitted will be a starting point for negotiation between the City and you. You must submit any proposal for consideration for changed Work in writing, breaking down the Work to be done into segments of cost as follows:
- (1) Labor. For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence.
  - (2) You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work.
  - (3) An amount not to exceed 30% of XIII.G.1.b.(1) above and an amount not to exceed 10% of XIII.G.1.b.(2) above will also be paid to you.
  - (4) Insurance and Payroll Taxes. Cost for property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions and social security taxes on the extra Work, to which an amount not to exceed 10% of the cost of these items will be added. You must furnish satisfactory evidence of the rates paid for the insurance and taxes.
  - (5) Materials. For materials accepted by the Commissioner and used as an integral part of finished Work, you will receive the actual costs of the materials delivered on the job site, including transportation charges that you paid (exclusive of machinery rentals as set forth below), as shown by original receipted bills, to which 15% will be added to the first \$10,000.00 and 10% for any amounts over \$10,000.00.
  - (6) Equipment. Number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Schedule of Average Equipment Ownership Expense With Operating Cost" as issued by IDOT, or in the AED Compilation of Rental Rates if equipment is to be rented, for the period that the machinery and equipment are to be used on the Work, to which no percent will be added. Where machinery and equipment are not listed in these schedules, then the rates will be determined by the Commissioner after reviewing all of your available records or other information concerning the expense of operating that type of equipment.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- (7) Cost for Increase in Performance and Payment Bond. You will furnish the Commissioner written documentation from the surety of the rate or rates applicable for additional bonding for this Contract. These rates will be applied to all the changes increasing or decreasing the Contract Price. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the surety, a percentage of the total change, as determined by the Commissioner, will be added or subtracted to cover the increase or decrease of the cost of the bond.
  - (8) When Work is to be performed by a Subcontractor, the proposal may include as administrative costs for you an amount not to exceed 5% of the first \$10,000.00 and 1% of any amount over \$10,000.00 of the total approved costs of the Work. The Subcontractor, however, is not allowed any additional markup if it sublets its Work. The use of a Subcontractor requires the approval of the Chief Procurement Officer. All subcontracted costs must be supported by proposals from the Subcontractors performing the Work. The Subcontractor's proposal must be broken down into its various parts of Work as described in items XIII.G.1.b.(1) through XIII.G.1.b.(8) above, or as required by the Commissioner.
- c. **Time and Material Basis.** If the Commissioner and you cannot agree on a price based on a proposal, the Work will be paid for on a time and material basis. Work that is done on a time and material basis will be paid for as follows:
- (1) Labor. For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence.
  - (2) You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work.
  - (3) An amount not to exceed 30% of XIII.G.1.c.(1) above and an amount not to exceed 10% of XIII.G.1.c.(2) above will also be paid to you.
  - (4) No payment will be made for labor performed on a time and material basis until you have furnished the Commissioner with itemized statements of the labor cost as follows.
    - (a) Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
    - (b) Certified payrolls or certified copies of them, pertinent to the Work for which payment is requested. The payroll records will contain the name, address and social security number of each employee, the employees correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. The time and material bills will be audited and corrected against the certified payrolls. Falsification of the certified payroll is an offense punishable by law.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- (5) Insurance and Payroll Tax. For property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions and social security taxes on the time and material Work, you will receive the actual costs, to which 10% will be added. No payment will be made for insurance and payroll taxes until you have furnished satisfactory evidence of the rate or rates paid for the insurance and tax.
- (6) Materials. For materials accepted by the Commissioner and used as an integral part of finished Work, you will receive the actual costs of the materials delivered on the job site, including transportation charges paid by him (exclusive of machinery rentals as set forth below), as shown by original receipted bills, to which 15% will be added to the first \$10,000.00 and 10% for any amounts over \$10,000.00.
- (7) You will be reimbursed for any materials used in the construction of the Work, such as sheeting, falsework, form lumber, burlap, or other materials for curing, etc., that are not integral part of the finished Work. The amount of reimbursement will be agreed upon in writing before the Work is begun and no percent will be added. The salvage value of the materials will be taken into consideration in the reimbursement agreed upon.
- (8) No payment will be made for material cost until you have furnished itemized statements of the material costs, which must include:
  - (a) Quantities of materials, prices, and extension;
  - (b) Material transportation costs supported by receipted invoices; and
  - (c) Receipted invoices for all materials used. However, if materials used on the time and material Work are not specifically purchased for the Work but are taken from your stock, then in lieu of the invoices, you will furnish an affidavit certifying that the materials were from your stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to you. The price quoted for the material must be reasonable and acceptable as per the normal industry practice.
- (9) Equipment. You will be paid for all machinery and equipment (other than small tools as currently defined by the Illinois Department of Transportation) used on the Work in accordance with the latest revision of "Schedule of Average Annual Equipment Ownership Expense with Operating Cost," as issued by the Illinois Department of Transportation, for the period that the machinery and equipment are in use on the Work, to which no percent will be added. Where machinery and equipment are not listed in this schedule, the rates will be determined by the Commissioner after reviewing all your available records or other information concerning the expense of operating that type of equipment. Where idle time for equipment is authorized by the Commissioner, it will be paid at a rate not to exceed 50% of the rates described above.
- (10) When equipment is rented, you will receive actual rental cost as shown by original receipted bills to which 5% will be added.



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- (11) No payment will be made for equipment unless designations, dates, daily hours, rental rates, and extensions for each unit of machinery and equipment are shown on the itemized statement of time and material Work.
- (12) Bond. The City will pay you the actual increase in cost of your performance bond. You will furnish from the bonding company written documentation of the rate or rates applicable for additional bonding for this Contract. These rate/rates will be applied to all the changes increasing or decreasing the Contract value. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the bonding company, a percentage of the total change, as determined by the Commissioner, will be added or subtracted to cover the increase or decrease of the cost of the bond.
- (13) When Work is performed by Subcontractor, you will receive as administrative costs an amount equal to 10% of the first \$10,000 and 5% of any amount over \$10,000 of the total approved costs of the Work. The Subcontractor, however, is not allowed any additional markup if it sublets its Work. The use of a Subcontractor will require the approval of the Chief Procurement Officer. All subcontracted costs must be supported by invoices from the Subcontractors performing the Work. The Subcontractors' invoices must be submitted in the form described in items (1) through (4) above.
- (14) Documentation. For additional Work performed on a time and material basis you will each day submit to the Commissioner detailed and complete records of the labor, material, equipment, and other costs relating to any force account Work performed on the day the Work is performed. You and the Commissioner will sign these daily extra Work reports.
- (15) Base Contract Work on a Premium Time Basis.
- (a) For Contract Work performed outside of regularly schedule working hours as defined by the Contract, premium time costs will be paid, only if expressly directed in writing by the Commissioner before you begin the Work. Compensation, when authorized, will cover only the direct cost of the premium portion of the time involved and will be without any charge for insurance. No payment will be made for union fringe benefits on the premium portion of the time unless expressly required by union agreement. Taxes that are attributed to the premium portion of the time will be paid. If you seek to charge taxes, the Commissioner may require you to supply verification that the employees' Social Security Tax, Federal Unemployment Tax, and State Unemployment Tax limits have not been exceeded.
- (b) An amount equal to 7% of the sum of the premium portion of the work plus taxes will also be paid to you to cover job site general conditions, overhead, and profit. All indirect costs are considered part of the overhead, including supervision, engineering, and other technical personnel.
- (c) If you enter into a subcontract, you will be allowed an additional 2% of the Subcontractor's premium time billing to cover your supervisory and related

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

expense on subcontract operations. The Subcontractor is not allowed the additional 2% if it sublets its Work.

(d) You must keep Daily Work Reports for the premium time hours signed by you and 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.

d. **Changes on Lump Sum Contracts or Lump Sum Items in Unit Priced Contracts.** All increases or decreases in the Work that is listed in the approved schedule of values will be priced, for the purpose of any change, based on the amounts stated for the Work in the approved schedule of values.

e. **All invoices for changed work.** You must submit all invoices for changed work within 45 days following completion of the changed work. Failure to provide a complete invoice for the changed work within that period, will authorize the Commissioner, subject to the approval of the Chief Procurement Officer, to determine the final amount for the Contract Modification that may be awarded without your signature.

f. Miscellaneous.

(1) For the purposes of this Section, any business entity which employs field labor and performs Contract Work on the job site is defined as a Subcontractor.” (This definition excludes suppliers/deliverers of materials.)

(2) When the extra Work involves only supply of material without any field labor at the job site, the supplier, for the purposes of this Section, will be considered a “Materials Subcontractor” and the mark up specified in Section XIII.G.1.c (6), “Materials,” will apply.

(3) Expenses incurred by the City. Upon written request of the Commissioner, you will pay the costs related to the Work that are the responsibility of the City. You will be reimbursed for the actual amount paid out to which will be added a markup as specified in Section XIII.G.1.c above.

**2. Change Claims:**

a. If you and Commissioner are unable to agree on the price and/or time extension in connection with a change, you must, within 15 days of completing the changed work, provide written notice to the Commissioner of the amount of money and/or time extension sought by you and the Contractual and factual basis for each. You will designate the document Notice of Claim.

b. The Commissioner will, within 30 days from receipt of the Notice of Claim, respond by requesting a meeting with you, making a written request for additional information from you, including a general statement of the basis for the claim, the facts underlying the claim, the notice to the Commissioner 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 you in writing that it should file a claim under Article XIX, “Claims and Disputes.” Any steps taken by the Commissioner to resolve

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

the Notice of Claim will not exceed 60 days from receipt of the Notice of Claim unless you agree to an additional amount of time in writing.

- c. If the Notice of Claim cannot be resolved as provided for in Section XIII.G.2, you must follow the requirements of Sections XIX.B and C, "Claims" and "Disputes."
- d. If you do not agree with the adjustment for time and/or money proposed by the Commissioner, you must follow the procedures set out by the Contract to file a claim and/or dispute as provided in Article XIX, Failure to follow the procedures set out by the Contract to file a claim and/or dispute as provided in Article XIX, constitutes a waiver of the right to make a claim or file a Dispute to the Chief Procurement Officer. In the event of your waiver, you may file a Dispute under Section XX with the Chief Procurement Officer seeking a final decision as to the adjustment for the changed work.

**H. Night, Sunday and Holiday Work**

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

**I. Acceleration**

- 1. If progress falls behind the approved schedule, the Commissioner may direct and authorize you, in writing, to perform premium time work as indicated in TIME OF COMPLETION in the Proposal section of the specifications. No additional compensation will be paid for such premium time work and the cost incurred for inspection and testing during the premium time work will be considered as "extra" inspection, and reimbursement will be provided by you as described in Section XV.C, "Materials and Equipment Testing and Inspection."
- 2. If conditions are encountered where you are specifically directed and authorized in writing by the Commissioner to perform premium time work, on the original contract, to advance an already established completion date of an event or the project, or project milestone, you will be compensated in accordance with Section XIII.G.c (15).
- 3. When the premium time Work is performed by approved subcontractor, you will receive a markup as specified in Section XIII.G.c (15). of the Contract.

**J. [Intentionally Omitted]**

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**K. Electronic Ordering And Invoices**

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

**XIV. CHANGES IN THE WORK**

**A. City's Right to Change Work**

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

**B. Contractor's Request**

Within 14 days of receipt of the written notice from the Commissioner, you must submit to the Commissioner a written request for adjustment to the Contract Price and/or Contract Time for the revised Work.

**C. Contract Modification**

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

**D. Contractor's Release**

All Contract Modifications constitute a full release of the City from any liability for any additional compensation or extension of time arising or resulting from the Work performed pursuant to the Contract Modification. By executing a Contract Modification, you accept the

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

compensation and/or time extension provided in it in full accord and satisfaction for that Contract Modification, and you expressly waive, release and relinquish all additional claims and demands relating to or arising out of the matters covered by that Contract Modification, including direct or indirect cost, profit, or damages related to disruptions.

**E. Performance of Changed Work**

You must promptly proceed with any changes in the Work or Contract Time as directed by a written order of the Commissioner ("Field Order"), in accordance with Section XIV.A., "City's Right to Change Work," with or without any Contract Modification. Your refusal or failure to proceed promptly with the changed Work as directed constitutes an event of default under the Contract. No change to the Work by you as directed by the Commissioner will operate to invalidate the Contract or release your surety.

**F. Change Claims and Disputes**

If you and Commissioner are unable to agree on the price and/or time extension in connection with a change, the procedures set forth in Article XIX, "Claims and Disputes," will govern.

**XV. TESTING & INSPECTION**

**A. Material, Inspection and Responsibility**

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

**B. Inspection of the Work**

1. All materials and equipment and each part or detail of the Work are subject at all times to inspection by the Commissioner or the Commissioner's authorized representatives. You are held strictly to the requirements of the Contract with respect to quality of materials, workmanship and the diligent execution of the Contract. Inspection may include mill, plant, shop and field inspection of any material or equipment furnished and any installation and construction under the Contract. You must allow the Commissioner and his representatives access to all parts of the Work and furnish such information and assistance as may be required to make a complete and detailed inspection.
2. All tests performed by or at the direction of the Commissioner under this Contract are to verify that the materials you are providing meet the Contract requirements. You, at your own expense, may perform or have others perform similar tests for the purpose of

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

maintaining the quality of the material being provided. Payment will not be made for uninspected or unauthorized use of materials incorporated into the Work.

3. You must remove or uncover such portions of the finished Work as the Commissioner may direct before acceptance. After the examination, you must restore the portion of the Work to the standard required by the Contract. If the Work thus exposed or examined proves acceptable, the City will pay the expenses of uncovering, removing and/or replacing the parts as extra work, but if the Work so exposed or examined is unacceptable, you must bear the expense of uncovering, removing and/or replacing of it in accordance with the Contract.
4. Except as may be otherwise specified in other sections of the Contract, the Commissioner will make final inspection of all Work included in the Contract as soon as possible after you notify him that the Work is substantially completed and ready for acceptance. If the Work is not acceptable to the Commissioner at the time of the inspection, he or she will inform you as to the particular defects to be remedied before the Work is accepted as substantially complete.

**C. Materials and Equipment Testing and Inspection**

1. You must provide the Commissioner sufficient notice of placing orders to permit tests to be completed before the materials are incorporated into the Work. You must afford such facilities as the Commissioner may require for collecting and forwarding Samples and making inspections and test. All Samples must be furnished without charge to the Commissioner. You must not make use of or incorporate into the Work the materials represented by the Samples until tests have been made and the materials have been found to be in accordance with the requirements of the Contract.
2. For materials that are integral parts of machinery or equipment or of parts of equipment that you or your Subcontractor normally stock, you must furnish the original and one copy of certified tests made at the time of production. You will keep the original and the Commissioner will retain the copy.
3. You must assure that the Commissioner has free entry, at all times while Work is being performed, to all parts of the manufacturer's works that concern the manufacture of the material or equipment ordered. The Commissioner must be permitted to examine all components and subassemblies. Assemblies and parts must be numbered for identification. You must provide the Commissioner with a detailed production schedule before the first inspection. After review of the schedule, the Commissioner will inform you of the methods, extent of inspection, facilities desired and date of inspection. You will afford the Commissioner without charge, all facilities necessary to determine that the material or equipment furnished are in accordance with the Contract. Test and inspection may be at the place of manufacture before shipment.
4. If for any reason, the City elects not to make the tests, the Commissioner may direct you to make the necessary tests. You must furnish a certification of the ordered tests after completion. The Commissioner reserves the right to inspect and reject all materials or equipment that were previously inspected and accepted at the place of manufacture or source of supply, after they were delivered to the Work site, if the materials or equipment do not meet the requirements of the Contract.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

5. When an inspection trip is terminated due to insufficient materials, unacceptable quality, Contractor labor problems, or Contractor equipment problems, you must pay the City its costs for any additional inspection trip.
6. The Contract documents may require you to include the cost of travel and living expenses for a specific number of City employees and/or other persons for a specific test. The manufacturer or you must furnish a certification of the ordered tests after completion. The Commissioner reserves the right to reinspect and reject all materials or equipment that have been previously inspected and accepted at the place of manufacture or source of supply, after they have been delivered to the site if the materials or equipment do not meet the requirements of the Contract.
7. Unless otherwise provided, all materials will be sampled and tested in accordance with the latest published standards and methods of the American Society for Testing and Materials (ASTM) and any revisions of them. If there are no ASTM standards that apply, applicable standard methods of other recognized standardizing agencies will be used. You must provide the name and qualifications of any such standardizing agency to the Commissioner for review and approval.

**D. Testing Laboratory Labels**

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

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

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**XVI. CONTRACTOR PRACTICES AT SITE**

**A. Cooperation Among Contractors**

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

**B. Protection of Persons and Property**

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

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

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

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

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



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City, you must erect and maintain such barriers, and, during the night time, such lights as will effectively prevent the happening of any accidents or damage to life, limb, or property in consequence of such excavation or occupation of such street, alley, or public grounds. You are liable for all damage occasioned by you, your agents, employees or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and you must indemnify the City pursuant to Article XVIII, "Insurance, Indemnity and Bonds."

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

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

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

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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

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

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

3. **Utilities Outside the Limits of the Work.** You must protect and maintain City-owned water lines, sewers, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances that are located entirely outside the limits of the Work in a satisfactory manner until the completion of the Work. Whenever in the performance of the Work it is necessary, because of the nature of the Work or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair such City-owned structures located entirely outside of the excavations, you must notify the appropriate City department to perform the Work, and must cooperate with the department in preserving service. You must reimburse the appropriate City department for the cost of performing the Work at no additional cost to the City under the terms of this Contract.
4. **Utility Relocation and Continuance of Service Plan.** You must prepare a Utility Relocation and Continuance of Service Plan, identifying procedures, locations, time frames and affected agencies and private owners. The Plan must be submitted to the Commissioner for review within 14 days after the Notice to Proceed.
5. **Cooperation with Utilities.** You must cooperate with all utility companies involved in connection with the removal, temporary relocation, reconstruction, or abandonment by these agencies of all services or facilities owned or operated by them within the limits of the Work.
6. **Work Performed by Others.** The Work must be performed with a minimum of interference to street traffic in the area. You must coordinate your Work with that of other City contractors, with contractors employed by adjacent property owners, and with contractors employed by any other party or parties for work on utilities to insure the best progress of the Work as a whole.
7. **Preservation and Protection of City Standard Bench Monuments and Survey Controls.** You are responsible for the preservation and protection of all City Standard Bench Monuments, in accordance with the provisions of § 10-4-220 of the Municipal Code and Article 105.09 of the Standard Specifications, and as directed by the Commissioner. Any survey control point that you disturb or remove you must replace or reestablish to

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

the satisfaction of the Commissioner, at no additional cost to the City. **DAMAGE TO ANY OF THE CITY STANDARD BENCH MONUMENTS WILL RESULT IN YOUR BEING PROSECUTED TO THE FULL MEASURE OF THE LAW.** The Department of General Services will pursue the matter of compensation for damages incurred by the City resulting from your actions or your failure to act during the execution of Work on this project.

8. Protection of Streets and Traffic. You must provide all necessary barricades, signs, flags, lights and reflectors. You must assure that vehicular and pedestrian traffic on all streets, including adjacent streets, bridges, overpass structures and ramps is maintained during the performance of the Work in accordance with the requirements of the Contract.
9. Temporary Restoration of Trench Cuts. Failure to maintain the temporary restoration of trench cuts, which causes the surrounding work area to be in an impassable and/or hazardous condition thereby creating undue inconvenience and danger to area residents is an event of default under this Contract.
10. Temporary Barriers, Signs, Lights and Flaggers. You must furnish, relocate and remove portable barricades and lights, collision protection, temporary signs (including traffic and project signs) and supports as directed by the Commissioner; and furnishing all necessary flaggers and other protection necessary for the maintenance of traffic flow in a safe and orderly fashion, as required by Article 107.14 of the IDOT Standard Specifications, except as otherwise specified in the Contract.

You must maintain, repair or replace all damaged or destroyed appurtenances referenced in the immediately preceding paragraph throughout the life of the Contract. Maintenance includes cleaning of the barricades and traffic signs by means of clean water. Flaggers must be provided whenever circumstances warrant.

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

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

**C. Protection of Streets, Alleys and Public Grounds**

When excavating or occupying any street, alley or public grounds of the City, you must erect and maintain temporary barriers and, during the night time, lights that will effectively prevent accidents or damage to life, limb or property in consequence of the excavation or occupation of the street, alley or public grounds. You are liable for all damages as a result of the excavation or occupation of any street, alley or public grounds, or by the carelessness of you, your subcontractors, agents, employees or workers and must indemnify and hold harmless the City against all judgments rendered against it by reason thereof.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**D. Protection of Existing Trees in the Right of Way**

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

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

The protection barrier must be constructed of orange snow fencing securely fastened to fence posts spaced a maximum of **1.5 m (5 feet)** on center. Posts are 1.8m (6 feet) in length with 61 cm (2 feet) set into the ground and 1.2m (4 feet) extending above ground. The fencing must be attached to the post with a minimum of four nylon locking ties evenly spaced at each post.

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

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

Trees located in Parkways or Boulevards:

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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

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

**E. Care of Existing Structures and Property**

1. **Property Access Maintenance Plan.** You must prepare a Property Access Maintenance Plan consistent with the requirements of the Contract. The plan must be submitted to the Commissioner for review within 14 days after award of the Contract. You must comply with all applicable Federal, State, and local requirements. You must also comply with the following requirements:
  - a. Maintain vehicle and pedestrian access to properties;
  - b. Maintain pedestrian access on both sides of all streets;
  - c. Provide access walkways to all buildings and businesses;
  - d. Sidewalks must remain open to the maximum extent possible;
  - e. Provide temporary relocation of access, where required;
  - f. Provide advisory and temporary signs for pedestrian and vehicle access changes and reroutings; and
  - g. Coordinate delivery locations and timing.
2. **Before doing any Work adjacent to or on the site of any buildings or other structures adjoining or in the line of the Work to be performed under the Contract, you must supply written notice of it to the owner or owners that the Work is to be done, and must cooperate with the owner(s) in the maintaining, removing, relocating, rearranging or adjusting wherever necessary, of all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment, or other appliances and structures located in any portion of the streets, public areas, highways and easements to be occupied or used during the prosecution of the Work.**
3. **Wherever in the performance of the Work it is necessary to remove, reconstruct, relocate, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewers connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the Work as shown on the plans, or ordered by the Commissioner you must perform the Work necessary to remove, reconstruct, relocate, rearrange, adjust or repair those structures and appurtenances, unless otherwise noted on the plans.**

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- a. The Commissioner will, at his sole discretion, direct you to modify your method of Work to interfere as little as possible with the normal conduct of business in or around the portions of the buildings or structures in use.
  - b. The building or structures may be in full time use and operation and will continue in normal use during performance of the Work. Building facilities, including heating, ventilation, and air conditioning, lighting and plumbing, will not be interrupted in the occupied areas, except as required for making connections to power sources as specified below.
  - c. You will serve written notification to the Commissioner requesting any anticipated interruption in facilities at least two weeks before disruption of services. You must provide any temporary facilities deemed necessary by the Commissioner due to a disruption of services. The Commissioner, in his sole discretion, will determine the procedures, times of day and dates you may accomplish the Work and may reject or modify your request.
  - d. Storage of all material and/or equipment must be in areas approved by the Commissioner, in a manner to minimize interference with the normal conduct of business in or around the occupied portions of the building and vehicular areas.
4. You must not perform Work on City-owned water mains, connections and appurtenances or on any City-owned electrical conduits, cables, vaults and appurtenances unless the City has abandoned the structure and the Commissioner has authorized the Work or the Work is included in the Contract. But, you must adjust City-owned water manholes and electric manholes that are shown as “to be adjusted” on the plans.
- a. You must protect and maintain in a manner satisfactory to the Commissioner, protect and maintain all City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances that are located entirely outside of the neat lines of the excavation as shown on the plans or as ordered by the Commissioner, until the completion of the Work under the Contract. Whenever in the performance of the Work under the Contract it becomes necessary because of the nature of the Work required by the Contract or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair those City-owned structures located entirely outside of the excavations, you must notify the appropriate City Department to perform the Work, and must cooperate with the Department in preserving service in or through them. You must reimburse the appropriate City Department for the cost of performing the Work, and the cost must be included in the various Contract prices.
  - b. Without cost to you the City will support, protect and maintain all City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances, any part of which is located inside of the neat lines of the excavations as shown on the plans or ordered by the Commissioner, or it will remove, replace, relocate, rearrange, adjust, or repair them, both inside and outside of the excavations. You, however, must adjust those City-owned water manholes and electric manholes that are shown as “to be adjusted” on the plans. Whenever in the performance of the Work under the Contract it becomes necessary

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

to support, protect, maintain, remove, replace, relocate, rearrange, adjust or repair such City-owned structures any part of which is located inside of the excavations, you must notify the appropriate City department to perform the Work and must cooperate with the department in preserving service in or through them.

- c. With the exception of the City-owned water mains, connections and appurtenances and the City-owned electric conduits, cables, vaults and appurtenances described above, and with the exception of City-owned structures that are to be removed or otherwise Worked upon as part of the requirements of the Contract, you must support, protect, maintain or relocate and rebuild all poles, trees, shrubbery, fences, sewers, pipes, conduits, cables, wires, manholes, tunnels, buildings, subways and other City-owned structures that pass through and are located within the excavations or that are adjacent to the Work to be constructed under the Contract during the construction and until the completion of the Work under the Contract.
5. You must notify and cooperate with the owners thereof in maintaining, removing, relocating, rearranging, or adjusting wherever necessary, all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment or other appliances or structures located in any portion of the streets, public areas, highways and easements that are to be occupied or used during the construction of the Work specified under the Contract.
- a. Wherever in the performance of the Work specified under the Contract it becomes necessary to remove, replace, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the excavations as shown on the plans or ordered by the Commissioner, you must perform the Work necessary to remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances. The cost of performing the Work must be included in the Contract price.
  - b. Wherever in the performance of the work specified under the Contract it becomes necessary to support and maintain City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances or wherever it becomes necessary as a result of your methods of construction during the Work under the Contract, to remove, replace, relocate, rearrange, adjust, or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances (other than those specified in the last preceding paragraph) you must perform the Work necessary to support, maintain, remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances, and you must bear the cost of the Work without any additional compensation for it.
  - c. It is the intention of the specifications that you include in the appropriate Contract Price or prices, all necessary cost and expense of supporting, maintaining, removing, replacing, relocating, rearranging, adjusting or repairing all City-owned appliances and structures (other than City-owned water mains, connection and appurtenances and City-owned electrical conduits, cables, vaults and appurtenances described in Section XVI.E.4.b), encountered in or affected by the Work, and that you must also include in the price or prices all necessary cost and expense of removing structures that have been or will be abandoned by their owners and that are necessary to be

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

removed in order to construct work under the Contract, but you must not include in the price or prices the cost or expense of supporting, maintaining, moving, replacing, relocating, rearranging, adjusting or repairing those appliances or structures that are not owned by the City and are not abandoned by their owners, except as may be otherwise specified below in this Section.

6. You must take all reasonable precautions for the protection of buildings, railroad tracks, street railway tracks and appurtenances, and other appliances and structures not owned by the City.
7. You must determine the methods to be employed, the procedure to be followed, the equipment, plant, falsework, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract and the approval of the Commissioner. Only adequate and safe procedures, methods, structures and equipment must be used.
8. You must provide drawings and calculations for all equipment, falsework, shoring, bracing and other temporary structures required for the Work, designed, signed and sealed by an Illinois licensed structural engineer. You must submit copies of all such drawings and calculations to the Commissioner for information only.
9. Field Check of Dimensions, Cutting and Patching. Where the Work connects to existing structures or appurtenances, you must take complete field measurements affecting all Work under this Contract and are solely responsible for the proper fit between the Work and existing structures or appurtenances. You must perform all cutting, patching, or fitting of Work that may be required to properly fit together the several parts of the Work and the existing structures or appurtenances.
10. Contractor's Layout of the Work. You are responsible for the correct lay-out and accurate fitting of all parts of the Work. You must furnish at your own expense all labor, materials and other expenses necessary for, or incidental to, the setting and maintaining of lines and grades (exclusive of the Work of establishing the original reference base line and bench marks that will be performed by the City). No separate payment to you for the cost of any of the Work specified in this Contract. The cost is included in the Contract unit or lump sum prices.
11. Salvage of Materials. If and whenever City- owned property such as valves, cast iron manholes, catch basin frames and covers, inlet boxes and grates, or any other appurtenance are to be removed and are not to be reused in the Work, you must securely store them at a suitable place on the job Site for possible use by the City (unless otherwise stipulated). You must take care to prevent damage in your handling of these appurtenances. You must deliver all items identified by the City for reuse to a location designated by the Commissioner and must legally dispose of the remaining items.
12. Wherever basements of buildings, subsidewalk vaults, tunnels, sewers, water, gas, telephone, telegraph, electric or other pipes, conduits, cables, wires, manholes, vaults, steam and street railway tracks or other similar structures and appliances not owned by the City are in or cross the excavations for structures to be built under this Contract, you must notify the owners of the structures and appliances to support, move, rearrange or abandon them, and cooperate with the owners of the structures and appliances in



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

preserving the service or services provided by the structures and appliances, except as may be otherwise specified or provided in the Contract. If you have complied with the above requirements and has been notified by the owners of the structures and appliances that any of them have been abandoned, or lacking such notice, if you have made all investigations and has found that any of the above structures or appliances have been abandoned by their owners and if the removal of any such abandoned structure or appliance is necessary in order to construct the Work, you must remove them at no additional cost to the City.

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

**F. Precautions and Safety**

1. You must take any precautions that may be necessary to render all portions of the Work secure in every respect, to decrease the liability of accidents from any cause and to avoid contingencies that are liable to delay the completion of the Work. You must furnish and install, subject to the approval of the Commissioner, all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of engineers and inspectors during the performance of the Work. You are required to conduct your Work so as not to unnecessarily obstruct the activities of other contractors who also may be engaged in work on this or any other project.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

2. Although the Commissioner may observe the performance of the Work and reserves the right to give you opinions and suggestions about safety defects and deficiencies, the City is not responsible for any unsafe working conditions. The Commissioner's suggestions on safety, or lack of it, will in no way relieve you of your responsibility for safety on the Work site. You have sole responsibility for safety and the obligation to immediately notify the Commissioner of all accidents.
3. Precautions must be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes must be observed.
4. You must provide completely equipped first aid kits readily accessible at all times on the Work site. You must designate an appropriately trained individual on each shift to be in charge of first aid.
5. You must provide at appropriate locations fire extinguishers or other fire protection equipment that comply in all respects with the Municipal Code and NFPA standards. You must maintain this equipment in proper operating condition at all times and must cause the equipment to be inspected by all appropriate agencies as required by law, but in no event less than monthly. You must comply with the Municipal Code requirements on the use of standpipes, hoses and other fire protection equipment.
6. Only such materials and equipment as are necessary for the construction of the Work under this Contract must be placed, stored or allowed to occupy any such space at the site of the Work. Not more than one day's supply of flammable liquids, including oil, gasoline, paint, or solvent is permitted to be kept on hand at any one time. If gasoline, flammable oils, other highly combustible materials or compressed gas cylinders are to be stored at the site, they must be stored in a secure manner, in compliance with all applicable laws, ordinances and regulations, and all storage places must be clearly marked. The written consent of the Commissioner is required for such storage. That consent in no way limits your liability for the materials.
7. You must prohibit all lighting of fires about the premises and all smoking in restricted areas where posted with "NO SMOKING" signs, and you must diligently enforce this prohibition. You must furnish and post "NO SMOKING" signs. You must not permit any debris or waste materials to be burned at the Work site.

**G. Health, Safety and Sanitation**

1. Clean-Up. During construction, you must keep the Work site and adjacent premises as free from material, debris and rubbish as practicable. Haul roads, streets and public areas must be swept daily. Before Final Completion and Acceptance of the Work, you must remove from the Work site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades and signs and must restore the site to the same general conditions that existed before the commencement of the Work. The cost of final clean-up is included in the unit prices for the various items, or included in the Contract lump sum price, as the case may be. You must clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt and any other foreign materials

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

deposited or accumulated on any portion of your Work, or existing facilities and structures, due to your performance of the Work.

2. **Snow and Ice Removal.** You must remove snow and ice that may impair progress of Work, be detrimental to workers, or impair trucking to and from points of delivery at the Work site.
3. **Glass Breakage.** You must replace all glass broken or damaged during construction at no additional cost to the City. You must promptly remove all broken glass from the Work site.
4. **Noise and Vibration Control.** All equipment, vehicles, and Work under this Contract must be conducted in accordance with the City Building Code, Chapter 11-4 of the Municipal Code, "Environmental Protection and Control," Article VII - *Noise and Vibration Control*, so as to cause a minimum of noise, vibration and inconvenience to the activities of the occupants of property and buildings in the vicinity of the Work. When the Commissioner, in his sole discretion, determines that your operations constitute a nuisance, you must immediately proceed to conduct your operations in a manner that abates the nuisance. You must provide all measures, including engine and exhaust mufflers, acoustic casing enclosures, maintaining equipment, or physical barriers along the edges of the construction zone, required to minimize noise and vibration. Noise and vibration levels may be monitored by the Commissioner.
5. **Health and Safety.**

As part of your obligation to observe and comply with all applicable laws, you must observe and comply with all applicable provisions of 29 C.F.R. Part 1926 (Safety and Health Regulations for Construction).

- a. Whenever a Federal OSHA compliance officer arrives at the work site, you must notify the Commissioner immediately via telephone and email.
- b. Within 24 hours of the conclusion of any OSHA inspection, you must report, in writing, all OSHA findings and recommendations that are known to you – including but not limited to any alleged hazards, whether or not already abated – to the Commissioner via email.
- c. If the inspection or any part of the inspection, such as the closing conference, involves a subcontractor and not you, then you must require and ensure that, within 24 hours of the conclusion of the inspection, the subcontractor reports all OSHA findings and recommendations that are known to it – including but not limited to any alleged hazards, whether or not already abated – to you. Within 24 hours of your receipt of any such report, you must provide the report to the Commissioner via email.
- d. Within 24 hours of your or any subcontractor's receiving any citation, hazard alert letter, or other documentation of any kind from OSHA relating to any actual, suspected, reported, alleged, or possible hazard or violation of any kind, you must provide a complete copy of the citation, hazard alert letter, or other documentation to the Commissioner. If you or any subcontractor makes any written response of any

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

kind to OSHA, including but not limited to any abatement certification, then within 24 hours of your or the subcontractor's mailing, emailing, or otherwise submitting the response to OSHA, you must provide a complete copy of the response, including but not limited to any supporting documentation submitted to OSHA, to the Commissioner.

- e. If you or any subcontractor are reporting any fatality, hospitalization, or injury of any kind to OSHA, you must immediately notify the Commissioner via telephone and email.
  - f. You must maintain, and provide to the Commissioner upon request – and require all subcontractors to maintain, and provide to the Commissioner upon request – (1) all records required to be made or maintained under any applicable OSHA standard, including but not limited to the OSHA 300 log, Safety Data Sheets, and employee training records; and (2) all records generated by you or by any subcontractor relating to any injury, fatality, or near miss at the work site, including but not limited to accident investigation documentation.
6. You must enforce among your employees such regulations in regard to cleanliness and the disposal of garbage and wastes that are necessary for their health and tend to prevent the inception and spread of contagious and infectious disease among them. You must provide an ample supply of suitable, pure drinking water, and must take such means as the Commissioner may direct to effectively prevent the creation of a nuisance on any part of the Work site or adjacent streets or property. You must construct and maintain necessary sanitary conveniences for the use of the laborers on the Work, properly secluded from public observation, in such manner and at such points as be approved, and their use must be strictly enforced. Whenever manholes have been used for sanitary proposes, they must be thoroughly flushed and cleaned when no longer needed.

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

You must also comply with all rules and regulations of the Federal and State governments and the City Department of Public Health.

**H. Hazardous Operations and Security**

- 1. During construction, all cutting or welding operations must be carried out with all precautions taken to prevent fires resulting from sparks or hot slag. Extreme care must be exercised to determine that sparks or embers do not fall into any combustible materials, even if such material is stored on lower floors. Sheet metal wind screens must be provided around the lead-melting furnaces whether the Work site is enclosed or not. Portable fire extinguishers must be provided at and below all locations where cutting or welding or melting operations are being performed or, if those operations are extensive, a hose from the stand pipe system or fire hydrant must be placed nearby.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

You must obtain special permission from the Commissioner of Water and pay all associated connection fees.

2. No welding, flame cutting, or other operations involving use of flame, arcs, or sparking devices, will be allowed without adequate protection. All combustible or flammable material must be removed from the immediate working area. If removal is impossible, flammable or combustible materials must be protected with fire blankets or suitable non-combustible shields to prevent sparks, flames or hot metal from reaching flammable or combustible materials. You must provide necessary personnel and equipment to control incipient fires resulting from welding, flame cutting, or other sources involving use of flame, arcs, or sparking devices.
3. You must immediately report any concentration of gas fumes, and you are responsible for clearing the area and notifying the Commissioner and the appropriate utility company. All operations in the area must be suspended until the source of the fumes has been located and corrected.
4. You must arrange for the installation of necessary fire protection lines and equipment as required by the Chicago Fire Department and as necessary to properly protect the Work site. Permanent fire protection facilities may be used for this purpose as soon as they are installed, tested and approved by the Commissioner for temporary use.
5. Salamander heaters or similar forms of uncontrolled heaters must not be used except with the special written permission of the Commissioner and City fire marshal and then only when each salamander is maintained under constant supervision.
6. Gasoline must be kept in and handled from approved safety cans.
7. All tarpaulins used for any purpose must be made of fire, water and weather-resistant materials.
8. You must furnish such watchmen as may be necessary to protect the public and those who are at or in the vicinity of the Work under this Contract, and to protect all materials, tools, machinery and equipment and all Work you have performed.
9. You must comply with all Federal and State and local occupational health and safety statutes, and any occupational health and safety standards promulgated thereunder; provide reasonable protection to the lives, health and safety of all persons employed under this Contract; furnish to all such persons a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm; keep all persons employed under this Contract informed of your protections and obligations under the statutes; and provide all persons employed under this Contract with information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms and emergency treatment. The Federal and State occupational health and safety statutes, and the rules and regulations promulgated thereunder, are considered part of this Contract as though fully set forth in this Contract.
10. You must provide safety instructions and training for all workers. You must conduct weekly craft safety meetings (tool-box type) of reasonable length as an effective means of communicating safety issues to workers. Reports containing tool box discussion topics must be signed-off by all attendees and must be submitted to the Commissioner.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**I. Services and Use of Site**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

during the entire period of construction. The telephone must be removed promptly upon Final Completion and Acceptance of the Work.

Unless otherwise specified in Book 3, you must supply a field office for the City's Superintendent consisting of a separate office facility. It must be of adequate size for efficient operations and be furnished with a desk, three chairs, 4-drawer file cabinet and a plan table. It must be equipped with electric lighting, heating, ventilating and cooling facilities. You must provide a separate telephone for City Superintendent's use.

You must also provide and maintain in clean condition for Superintendent's use, including toilet facilities, having a water closet and laboratory fixture connected to sanitary sewer and water service. Temporary toilet facilities must be located in the City's Superintendent's trailer and comply with City and State regulations relating to health and sanitation. The toilet facility must be serviced twice weekly and kept stocked with toilet paper, soap, and paper towels.

- b. Toilets. You must provide at least one portable chemical toilet for every 20 workers or fraction of that number at the Work site as soon as construction operations commence. Toilet facilities must be serviced, at a minimum, twice weekly, which includes draining tank and refilling and disinfecting the interior of each toilet unit, and keeping each unit stocked with toilet paper. Toilet facilities must be maintained during the term of the construction period and removed upon completion of the Work.
- c. Stove heaters in temporary offices and sheds must be properly installed to protect combustible walls, floors and roof.
- d. Storage of Materials. 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. You may store materials in the areas provided as working areas by the Contract. If no areas are provided, or if the areas provided are insufficient, you must provide the space required at your expense. Upon completion of the Work, you must clean and restore the storage sites and working areas to their original condition at your expense.

All materials and equipment must be received at the Work undamaged. The Commissioner has the right to reject any method of packing and shipping that, in the Commissioner's opinion, will not adequately protect the materials and equipment against damage while they are in transit or storage or that will damage existing structures.

- e. Storage Sheds. You and each Subcontractor must provide suitable watertight storage sheds for your, or their own, use as needed. You and each Subcontractor are responsible for and must pay for any electric services to your or their storage sheds. However, the electrical Work must be performed by a licensed electrical Subcontractor. You are responsible for materials stored in the open; they must be arranged in an orderly manner and properly protected against the elements and damage.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

4. Working Space. You must provide working space for your own use and for each of your Subcontractors. It must provide sufficient space for benches, tools, material storage and for such other purposes as may be required to properly perform and expedite the Work. Allocation of such Work areas is subject to approval by the Commissioner. You must maintain all Work areas in a clean and orderly condition and take whatever precautions as may be necessary adjacent to the new Work. You must clean, repair or replace any damage to Work site due to improper protection at no additional cost to the City.
5. Equipment and Falsework: You must determine the methods to be employed, the procedures to be followed, the equipment, plant, falsework, shoring, bracing, and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract. Only adequate and safe procedures, methods, structures, and equipment must be used. You must furnish and maintain and are solely responsible for all equipment such as temporary ladders, ramps, runways, hoists, scaffolding, and similar items required for proper execution of Work. All such apparatus, equipment and construction must meet the requirements of Federal, State and local laws concerning the safety and protection of employees. No hoist, scaffolding or other equipment must be erected at such location as will interfere with general construction or progress of other trades. Hoists, scaffolding or other equipment must be located at sufficient distance from exterior walls to prevent staining or marring of any permanent Work. All suspended scaffolding and staging must be lowered to ground level at the end of each work day.
6. Project Signs. You must erect and maintain signs identifying the Project and indicating City, and to the extent applicable, State and Federal participation. Work under this item includes constructing and erecting project signs of the size and material specified in the Contract drawings. These signs must be erected in locations approved by the Commissioner and must be maintained throughout the term of this Contract. You are responsible for the immediate removal of graffiti. If you are notified of graffiti, you must remove such within 24 hours. The signs must not be removed until you receive such notice from the Commissioner. No separate payment will be made for furnishing, erecting and maintaining the project signs; it is incidental to the Contract.

**J. Reports and Plans**

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



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**XVII. ENVIRONMENTAL REQUIREMENTS**

**A. Compliance with Environmental Laws**

1. You must comply with all Environmental Laws including those listed in the Economic Disclosure Statement and Affidavit (EDS), which you must execute and have notarized, and any analogous future local, State or Federal ordinance or statute, rule and regulation promulgated under or under the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the 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.
2. If you are required under any Environmental Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on, under, or about any premises you use to perform the Work required under this Contract, you must provide a copy of the report or notice to the City. In the event of a release or threatened release of Hazardous Materials or special waste into the environment, or in the event of any claim, demand, action or notice is made against you regarding your failure or alleged failure to comply with any Environmental Law, you must notify the City pursuant to Section XVIII.C, "Disposal of Waste Materials, Construction Debris, Soils and Waste," below.
3. If you fail to comply with any Environmental Law, the City may terminate this Contract in accordance with the default provisions of this Contract and may adversely affect your eligibility for future contract awards.

**B. Environmental Permits**

1. You must show evidence of, and keep current throughout the term of this Contract, all waste hauling, special waste hauling, disposal permits and insurance certificates required by Federal, State, City or other local governmental body or agency pursuant to any Environmental Law.
2. When requested by the Chief Procurement Officer, you must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Chief Procurement Officer throughout the duration of this Contract. Noncompliance with this requirement may be cause for rejection of the bid and/or termination of this Contract and declaring you non-responsible in future bids.
3. Environmental Records and Reports. You are required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including:
  - a. Vehicle maintenance records;
  - b. Safety and accident reports;
  - c. IEPA or OSHA manifests;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- d. Disposal records, including disposal site used, date, truck number and disposal weight, bills of lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material; and
- e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

disposal/handling site identified in the Form that (i) has been cited as being in violation of any environmental law or regulation or of any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the Form, you must arrange for a substitute disposal/handling site that meets the requirements specified in the Form and provide a revised Form to the Commissioner of Environment. You further acknowledge that any such substitution is at no additional cost to the City, regardless of the reason necessitating such substitution.

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

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

**E. Environmental Control**

In performing the Work, you must become thoroughly familiar with all Federal, State, and local statutes, ordinances, and directives with respect to the elimination of excessive noise and pollution of air, water, and soil due to construction and other operations. Attention must be given to reduce the noise of heavy construction equipment and to the control of dust, smoke, and fumes from construction equipment and other operations on the Work site, and the dirt and noise created by heavy truck operations over City streets in accordance with ordinances of the City and orders of the Commissioner. The discharge of Hazardous Materials into waterways and City sewers is not permitted.

**F. Open Dumping Prohibited**

The removal of all recyclable material and garbage, refuse or other waste material, including broken concrete, bricks, rock, paving asphalt and incidental debris generated from all construction or demolition activities performed under this Contract, must be transported to a facility that is zoned and permitted to accept the material under Chapter 11-4 of the Municipal Code and all applicable local, State, and Federal regulations.

You must retain bills of lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material and make them available to the City upon request

**G. Environmental Protection**

You must comply with, and must cause your Subcontractors to comply with, all Federal environmental and resource conservation laws and regulations, whether existing or promulgated later, as they apply to this Contract. You must include these provisions in all subcontracts. Some, but not all, of the major Federal laws that may affect this Contract include the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* and scattered sections of 29 USC; the Clean Water Act, as amended, scattered sections of 33 USC and 12 USC; the Resource

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

Conservation and Recovery Act, as amended, 42 USC §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§ 9601 *et seq.*. You and your Subcontractors must also comply with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; U.S. DOT statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 *et seq.*; and U.S. DOT regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

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

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

1. 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:

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

2. The Contractor must comply with the Clean Diesel Contracting Ordinance, Section 2-92-595 of the Municipal Code of Chicago.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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.

8. 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.

**XVIII. INSURANCE, INDEMNITY AND BONDS**

**A. Indemnity**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

or suits that may be given or filed in connection with your performance or the performance of any Subcontractor and for which the Indemnitees are entitled to indemnification under this Contract and to give the Indemnitees authority, information and assistance for the defense of any claim or action.

**B. Contribution**

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

**C. Admiralty**

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

1. Without limiting your waiver, you specifically consent to pay all sums in respect of any claims against the Indemnitees and other costs suffered by the Indemnitees arising from or occasioned by your operations in or on waterways, including the following:
  - a. Loss or damage to any other ship, vessel or boat caused proximately or otherwise by your vessel, or loss of the cargo or the other ship, vessel or boat;
  - b. Loss of life or personal injury, or for any cost of life salvage;
  - c. Loss or damage to any harbor, dock, building, graving or otherwise, slipway, pontoon, pier, quay, tunnel, jetty, stage, buoy, cables of any kind, or other fixed or movable object or property whatsoever;
  - d. The cost of the removal, raising or destruction of the wreck of any vessel you employ in performing your obligations under the Contract;
  - e. If a vessel is disabled or otherwise, the cost of towage or other salvage of any vessel you employ in performing your obligations under the Contract;
  - f. Loss or damage to the bottom, banks, or shoreline of the waterway.

**D. Performance and Payment Bonds**

You must, before award of the Contract, deliver to the Chief Procurement Officer a performance and payment bond in the amount set forth in Book 2. Any performance bond that you provide must comply with the provisions of 30 ILCS 550/1 *et seq.*, as amended, and of § 2-92-030 of the Municipal Code, as amended. It must also be in the form of the

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

performance and payment bond form included in Book 2. The surety or sureties issuing the bond must be acceptable to the Comptroller and must have a Best's Key Rating Guide of "B+," Class XI or greater and be listed in the most recently published "Listing of Approved Sureties" of the U.S. Department of the Treasury Circular 570, with underwriting limitations in excess of the Contract Price. The bond must cover the warranty period required by the Contract.

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

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

**E. Insurance**

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

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

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

**XIX. CLAIMS AND DISPUTES**

**A. General**

Compliance with the provisions in this Article XIX is a precondition to seeking judicial review of an adverse decision of the Chief Procurement Officer. **You must not withhold performance of and must prosecute any Work required by the Commissioner while your claim, including judicial resolution, if any, is pending. You must prosecute all of**



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**your Work including any disputed Work with the same diligence and effort as if no dispute existed.** Neither the Chief Procurement Officer's determination (see Section XIX.C.3 below), nor the continued performance by either party, constitutes an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

**B. Claims**

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

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

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

**C. Disputes**

1. Invoking Dispute Resolution Procedures. If you dispute the Commissioner's resolution or denial of your claim, or if your claim is deemed denied, you have 10 days to forward your claim and your documentation to the Chief Procurement Officer indicating to him that you are requesting resolution of a dispute and showing that you have complied with the preceding claims procedures. Your 10-day period to invoke dispute resolution by the Chief Procurement Officer is counted from the date the Commissioner's written

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

resolution was sent to you, or, if he has not responded or forwarded the claim, from the date on which the time for the Commissioner's response lapsed.

2. Waiver. If you fail to file a Request for Resolution of Dispute with the Chief Procurement Officer within the 10-day period you will have waived your claim, the right to make the claim later, and the right to dispute its resolution or denial.
3. Dispute Procedures. Once the dispute resolution procedures are invoked, the Chief Procurement Officer will proceed to a final and binding decision under such rules as he from time to time promulgates. A copy of those rules are available through the Department of Procurement Services. The Chief Procurement Officer's decision will be implemented through a Contract Modification, if required, that will be made a part of the Contract with your signature or without it should you refuse to sign the Contract Modification. If either you or the Commissioner disagree(s) with the decision of the Chief Procurement Officer, the exclusive remedy is judicial review by a common law *writ of certiorari*. Unless such review is sought within 35 days of receipt of the Chief Procurement Officer's decision, all rights to seek judicial review are waived.

**XX. EVENTS OF DEFAULT AND TERMINATION**

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

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

**B. Events of Default**

Your failure to perform any of your obligations under the Contract, including one or more of the following, is an event of default:

1. Failure to begin the Work at the time specified;
2. Failure to perform the Work with sufficient workers and equipment or with sufficient materials to insure the completion of Work or any part of the Work within the time specified by the Contract;
3. Failure to perform the Work in accordance with the Contract;
4. Failure to promptly remove materials, repair, or replace Work that was or were rejected as defective or unsuitable;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

5. Unauthorized discontinuation of the Work;
6. Insolvency, bankruptcy or assignment for the benefit of creditors that impairs your ability to pay Subcontractors or perform the Work;
7. Failure to pay Subcontractors or material suppliers;
8. Failure to carry on the Work in a manner acceptable to the Commissioner;
9. Failure to observe Federal, State, or local laws or regulations governing safety and security requirements, including all environmental requirements;
10. Failure to comply with any other term of this Contract that states an event of default or failure to comply with any term of this Contract in any material respect; and
11. Failure to identify disposal site(s) for materials, construction debris, soil and other wastes or to submit such information when requested by the Chief Procurement Officer.
12. Failure to notify City of change in information submitted in Contractor's original Economic Disclosure Statement ("EDS") and to submit a new EDS;
13. Default under any other City contract;
14. Violation of any City ordinance, even if unrelated to contract performance.

**C. Remedies**

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

1. Opportunity to Cure: The Chief Procurement Officer may provide you the opportunity to cure the default. If he does so, you must cure the default within 10 days after notice from the Chief Procurement Officer is given. If the Chief Procurement Officer receives written notification from the Commissioner that you have not cured the default within the 10-day cure period, the Chief Procurement Officer may at any time after that terminate the Contract, in which event the termination of the Contract is final and effective.
2. Termination: The Chief Procurement Officer may terminate the Contract. Written notification of the default and termination of the Contract will be provided to you and the bond company by the Chief Procurement Officer. The Chief Procurement Officer's decision and declaration of termination is final and effective.
3. In addition to the foregoing, upon an event of default as defined in Section XXI.B, "Events of Default," the City may invoke any or all of the following remedies:
  - a. The right of set-off against any payments due or to become due to you;
  - b. The right to take over and complete the Work, or any part of it, either directly or through others. The City may use your Subcontractors, materials and equipment to complete the Work. If the City notifies you that it is invoking this remedy, all rights you may have in or under your subcontracts are assigned to the City, subject to the City's right to take assignment of all or only selected subcontracts, at the City's

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

discretion. The sole obligation accepted by the City under such subcontracts is to pay for Work satisfactorily performed after the date of the assignment. In the event a conditional assignment has not been executed, you must execute, or cause to be executed, any assignment, agreement, or other document that may be necessary, in the sole opinion of the Corporation Counsel, to evidence or effect compliance with this provision. You must promptly deliver such documents upon the City's request. In the case of any subcontract so assigned and accepted by the City, you remain liable to the Subcontractors for any payment already invoiced to and paid by the City, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortious conduct, or any other act or omission, or breach of Contract, by you, your officers, employees, agents, and other Subcontractors, arising before the date of assignment to the City, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. You must notify your Subcontractors of these requirements;

- c. In the event of termination, all costs and changes incurred by the City, together with the cost of completing the Work, are deducted from any moneys due or that may become due to you. When the expense incurred by the City exceeds the sum that would have been payable under the Contract, you and the surety are liable and must pay to the City the amount of the excess;
- d. The right to terminate the Contract as to any or all of the Work yet to be performed;
- e. The right of specific performance, an injunction, or any other appropriate equitable remedy, as may be applicable;
- f. The right to money damages, including all expert witness or other consultant fees, court costs, and attorneys' fees that the City may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an event of default under this Contract;
- g. The right to withhold all or any part of your compensation;
- h. The right to terminate any or all of any other contracts that you may have with the City; and
- i. The right to deem you non-responsible in future contracts to be awarded by the City.

**D. Nonexclusivity of Remedies**

The remedies under the terms of this Contract are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is 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 impairs any such right or power, nor constitutes a waiver of any event of default or acquiescence in it, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**E. Adjudication of Termination**

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

**F. Early Termination**

1. The City, through the Chief Procurement Officer, may terminate your Work by written notice stating the effective date of the termination. Immediately upon receipt of the notice, you must provide similar written notice to the affected Subcontractor(s), whereupon you and Subcontractor(s) must, except for services necessary for the orderly termination of the Work.
  - a. Stop all Work and place no further order or subcontracts for materials, services, equipment or supplies;
  - b. Assign to the City, in the manner and to the extent directed, all of your rights under Work orders, purchase orders and subcontracts relating to the portion of the Work that has been completed;
  - c. Terminate Work orders, purchase orders and subcontracts outstanding to the extent that they relate to the Work and are not assigned to the City;
  - d. Take any action necessary to protect property in your possession in which the City has or may acquire an interest; and
  - e. Take any other action toward termination of the Work that the City may direct.
2. If all or a portion of your Work is terminated under this Section, "Early Termination," you are entitled to payment of those costs relating to the completed portion of the Work. No payment will be made for Work not actually performed. Deductions will be made by the City for any amounts previously paid to you and for any amounts that may be due the City, or that the City may offset or withhold by the terms of this Contract. Thus, the City will pay you, subject to the limitations set forth in this Contract, the sum of the following costs:
  - a. That portion of the Contract Price related to the Work you completed immediately before notice of termination less the payments for progress or changes previously made; and
  - b. Expenses incurred for which you are liable as the result of your termination of respective Work orders, purchase orders or subcontracts related to the notice of termination. The total amount of all payments to you must not, in any event, exceed the proportion that the Work actually performed (including materials delivered to the Project site minus credits for returned goods or canceled orders) at the date of termination bears to the entire Work to be performed under this Contract. Any payment to you under this subsection will be made in accordance with the provisions of Article XIII, "Payments."

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

3. After receipt of a notice of termination under this Section XX.F, "Early Terminations," you must submit to the Commissioner your final invoice in the form required, with supporting documentation. The Commissioner may require certified payrolls, receipts and other proof of expenditures. The final invoice must be submitted promptly, but in no event more than 60 days after the effective date of termination. Failure to submit the final invoice within 60 days after the effective date of termination constitutes a waiver of the final invoice.

**G. Non-Appropriation**

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

**XXI. COMPLIANCE WITH ALL LAWS**

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

Contractor must observe and comply with all Applicable Laws, in effect now or later and whether or not they appear in the Agreement, including those specifically referenced herein or in any of the Contract Documents. Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required in connection with the performance of its obligations hereunder, and Contractor must require all subcontractors to do so. Contractor is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

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.

**B. 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:

**1. Compliance with Federal Nondiscrimination Requirements**

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

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

**2. 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 (Nondiscrimination in Federally-Assisted Programs of the US Department of Transportation).

**3. 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.

**4. 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 City or applicable federal agency (e.g. Federal Aviation Administration, Federal Highway Administration, Federal Transit Authority, Transportation Security Administration, Department of Housing and Urban Development, etc.) providing funding to the City department(s) on this contract to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the federal agency, as appropriate, and will set forth what efforts it has made to obtain the information.

**5. Sanctions for Noncompliance**

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

- A. Withholding payments to the contractor under the contract until the contractor complies; and/or



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

B. Cancelling, terminating, or suspending a contract, in whole or in part.

**6. Incorporation of Provisions**

The contractor will include the provisions of above paragraphs 1, "Compliance With Regulations" through 6 "Incorporation of Provisions" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the applicable federal agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the 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.

**7. Other Non-Discrimination Requirements**

**a. Illinois Human Rights Act**

**1. Generally**

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

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

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

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

When required by the state rules, contractors shall develop and implement written affirmative action plans to overcome underutilization of minorities and/or women, including, at minimum, a description of the contractor's workforce analysis and goals and timetables for recruitment efforts, per 44 Ill. Admin. Code 750.130. Contractors shall also state in all solicitations that all applicants be afforded equal employment opportunity without discrimination ("because of race, color, religion, sex,

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status, order of protection status or unfavorable discharge from military service,” 44 Ill. Admin. Code 750.150), and advise in writing their personnel, referral sources, and labor organizations of the contractor’s obligations under state law and any affirmative action plan.

**3. State of Illinois Equal Employment Opportunity Clause**

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

A) That Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service; and, further, that he or she will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.

B) That, if Contractor hires additional employees in order to perform this contract or any portion of this contract, Contractor will determine the availability (in accordance with 44 Ill. Admin. Code Part 750) of minorities and women in the areas from which Contractor may reasonably recruit and Contractor will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.

C) That, in all solicitations or advertisements for employees placed Contractor or on Contractor's behalf, Contractor will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service.

D) That Contractor will send to each labor organization or representative of workers with which Contractor has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the Contractor's

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

obligations under the Illinois Human Rights Act and 44 Ill. Admin. Code Part 750. If any labor organization or representative fails or refuses to cooperate with the Contractor in Contractor's efforts to comply with the Act and this Part, the Contractor will promptly notify the Illinois Department of Human Rights and the City and will recruit employees from other sources when necessary to fulfill its obligations under the contract.

E) That Contractor will submit reports as required by 44 Ill. Admin. Code Part 750, furnish all relevant information as may from time to time be requested by the Illinois Department of Human Rights or the City, and in all respects comply with the Illinois Human Rights Act and 44 Ill. Admin. Code Part 750.

F) That Contractor will permit access to all relevant books, records, accounts and work sites by personnel of the City and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights's Rules and Regulations.

G) That Contractor will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed, so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by subcontractors; and further it will promptly notify the City and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply with the provisions. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

**b. Chicago Human Rights Ordinance MCC Ch. 2-160**

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

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

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

The City has established by ordinance equal employment opportunity goals for construction projects with an estimated contract value of \$100,000 or

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

more. The City's yearly goals, as a percentage of construction aggregated work hours per category of worker, are as follows:

- A) 25% by minority journeyworkers and apprentices;
- B) 7% by women journey workers and apprentices;
- C) 40% by minority laborers; and
- D) 10% by women laborers.

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

**d. Business Enterprises Owned by People With Disabilities (BEPD)**

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

**C. Business Relationships with Elected Officials**

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.

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.

**D. Inspector General**

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

applicant to cooperate with the Inspector General in any investigation or hearing, if applicable, undertaken pursuant to Chapter 2-56 of the Municipal Code. Contractor understands and will abide by all provisions of Chapters 2-56.

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

**E. Governmental Ethics Ordinance**

As required by § 2-156-120 of the Municipal Code, no payment, gratuity or offer of employment shall 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.

**F. False Statements**

False statements made in connection with this Agreement, 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 Agreement (each a "Disclosure Misrepresentation"). Any such Disclosure Misrepresentation renders the Agreement voidable at the option of the City, notwithstanding any prior review or acceptance by the City of any materials containing a Disclosure Misrepresentation. In addition, the City may debar Contractor, assert any contract claims or seek other civil or criminal remedies as a result of a Disclosure Misrepresentation (including costs of replacing a terminated Contractor pursuant to Chicago Municipal Ordinance 1-21-010).

**G. Americans with Disabilities Act**

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

**H. Prohibition on Certain Contributions – Mayoral Executive Order 2011-4**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

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

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

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

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

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

For purposes of this provision:

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

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**I. Licensing of General Contractors**

Important: The failure to comply with the provisions of Chapter 4-36 of the Municipal Code ("Chapter 4-36") may result in ineligibility to bid, inability to perform (or continue) to work, imposition of substantial fines, and/or in the City's revoking the Bidder's "general contractor" license. Information about Chapter 4-36 and application forms are available on the City's website, [www.cityofchicago.org](http://www.cityofchicago.org). A copy of the entire ordinance is provided in Book 2 of this contract.

As stated elsewhere in the specification, the City reserves the right to reject any or all bids.

Bidder must be in compliance with the requirements of Chapter 4-36, in the appropriate license class commensurate with the size of this project, if the license is required for the scope of work, **at the time Bidder submits its bid** and, if it is awarded a contract, throughout the term of the contract.

Contractor's failure to be licensed as a "general contractor" at all times throughout the term of the contract, if the license is required for the scope of work, is an **event of default** under the Agreement and the City may exercise any and all rights and remedies permitted under the contract, at law, or in equity.

**J. Buy America**

Contractor must ensure that, to the extent applicable to the Work under this Contract, Work provided under this Contract complies with any Buy America provisions of the federal government and/or any similar provisions of the State or City.

**K. Steel Products**

Unless otherwise provided in the Steel Products Procurement Act, 30 ILCS 565/1 *et seq.*, steel products used or supplied in the performance of this contract or any subcontract to this contract must be manufactured or produced in the United States. Knowing violation of this law may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

**L. No Waste Disposal in Public Way MCC 11-4-1600(E)** Contractor warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid waste;
- 11-4-1530 Compliance with rules and regulations required;

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

11-4-1550 Operational requirements; and  
11-4-1560 Screening requirements.

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

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

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Contract, and may further affect the Contractor's eligibility for future contract awards. The opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Contract, at law or in equity.

**M. Deemed Inclusion** Provisions required by Applicable Law to be inserted in the Agreement are deemed inserted in the Agreement whether or not they appear in the Agreement or, upon application by either party, the Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after the Agreement is signed prevent its enforcement.

**N. Firms 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.

**O. 2014 City Hiring Plan Prohibitions**

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



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

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 OIG Hiring Oversight.

**P. Duty to Report Corrupt 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).

**Q. Equal Pay**

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.

**R. Electronic Mail Communication**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**S. 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.

**T. Economic Disclosure Statement and Affidavit ("EDS")**

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

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

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

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

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

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

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

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

Failure by the Contractor or 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 1-23-030 of the Municipal Code of Chicago shall be a default for which no cure is available and grounds for termination of this Contract.

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

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

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

**U. Safety Enhancing Vehicle Equipment Contracting (MCC 2-92-597)**

**1. Definitions**

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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

"Commissioner of AIS" means the City's Commissioner of Assets, Information and Services.

"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 AIS.

**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

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

- (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 AIS 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 AIS, the contractor must submit to the Commissioner of AIS, 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.

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

**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.

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

This section applies if this Contract was advertised on or after June 30, 2018.

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

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

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

“Sexual harassment” means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (ii) submission to or rejection of such conduct by an individual is used as the basis for any employment

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

decision affecting the individual; or (iii) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

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

As a condition of contract award, Contractor shall, as prescribed by the Chief Procurement Officer, attest by affidavit that Contractor has a written policy prohibiting sexual harassment that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment; and (iii) the legal recourse available for victims of sexual harassment. Contractor’s affidavit is included in Book 2 in the form titled “Sexual Harassment Policy Affidavit”.

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

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

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

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

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

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

- (1) Contractor shall not screen job applicants based on their wage or salary history, including by requiring that an applicant’s prior wages,

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

including benefits or other compensation, satisfy minimum or maximum criteria; or by requesting or requiring an applicant to disclose prior wages or salary, either (i) as a condition of being interviewed, (ii) as a condition of continuing to be considered for an offer of employment, (iii) as a condition of an offer of employment or an offer of compensation, or (iv) as a condition of employment

- (2) Contractor shall not seek an applicant's wage or salary history, including benefits or other compensation, from any current or former employer.

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

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

**XXII. MISCELLANEOUS**

**A. Counterparts**

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

**B. Modifications**

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

**C. No Waiver of Legal Rights**

1. The City will not be precluded or estopped from showing the true amount and character of the Work performed and materials furnished by you, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The City will not be precluded or estopped from recovering from you and your sureties such damages as the City may sustain by reason of your failure to comply with the terms of the Contract.
2. Neither the acceptance by the City, or any representative of the City, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the City, will operate as a waiver by the City of any portion of



**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

the Contract, or of any power reserved in it or any right of the City to damages provided in it. A waiver of any breach of the Contract does not constitute a waiver of any other or subsequent breach.

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

**D. Governing Law**

This Contract is governed in accordance with the laws of the State of Illinois without regard to choice of law principles. You irrevocably submit, and will cause your 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. You consent to service of process on you, 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 you, or by personal delivery on any of your officers, directors, or managing or general agents.

**E. Consent to Service of Process and Jurisdiction**

All judicial proceedings brought against you with respect to this Contract may be brought in (i) any court of the State of Illinois of competent jurisdiction; and (ii) any Federal court of competent jurisdiction located within the boundaries of the Federal court district of the Northern District of Illinois, and by execution and delivery of this Contract, you accept, for yourself and in connection with your properties, generally and unconditionally, the exclusive jurisdiction of those courts, and irrevocably agree to be bound by any final judgment rendered by them from which no appeal has been taken or is available. You designate and appoint the representative identified on the signature page to this Contract under the heading "Designation of Agent for Service Process" as your agent in Chicago, Illinois to receive on your behalf service of all process in any such proceedings in the court (which representative must be available to receive the service at all times), the service being acknowledged by the representative to effective and binding service in every respect. The agent may be changed only upon the giving of written notice by you 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 and is retained or employed by you. You irrevocably waive any objection (including any objection of the laying of venue or based on the grounds of *forum non conveniens*) which you may now or later have to bring any action or proceeding with respect to this Contract in the jurisdiction set forth above. Nothing in this section affects

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

the right to serve process in any other manner permitted by law or limits the right of the City to bring proceedings against you in the courts of any other jurisdiction.

**F. Contractor Cooperation**

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

**G. Joint and Several Liability**

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

**H. No Third Party Beneficiaries**

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

**I. Notices**

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

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

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

**J. Authority**

1. Contractor: Your execution of this Contract is authorized and signature(s) of each person signing on your behalf has been made with complete and full authority to commit you to all terms and conditions of this Contract, including every representation, certification,

**Department of Water Management**  
**Terms and Conditions for Construction Contract - Book 1**

(September 2018)

and warranty contained in it, attached to it and collectively incorporated by reference in it, or that may be required by the terms and conditions of this Contract. If other than a sole proprietorship, you must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entities rules and procedures.

2. Consents and Approvals: Unless otherwise expressly stated in this Contract, any consents and approvals to be given by the City are made by the Commissioner.

**K. Software License Agreements**

The City reserves the right to negotiate software license agreements directly with the software supplier.

### **XXIII. SPECIAL CONDITIONS REGARDING MINORITY-OWNED BUSINESS ENTERPRISE, WOMEN-OWNED BUSINESS ENTERPRISE, AND VETERAN-OWNED BUSINESS ENTERPRISE COMMITMENT IN CONSTRUCTION CONTRACTS**

#### **I. Policy and Terms**

As set forth in 2-92-650 *et seq.* of the Municipal Code of Chicago (MCC) it is the policy of the City of Chicago that businesses certified as Minority-owned Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the MCC and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, as well as MBEs and WBEs certified by Cook County, Illinois, shall have full and fair opportunities to participate fully in the performance of this contract. Therefore, bidders shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

Under the City's MBE/WBE Construction Program as set forth in MCC 2-92-650 *et seq.*, the program-wide aspirational goals are 26% Minority Owned Business Enterprise participation and 6% Women Owned Business Enterprise participation.

Pursuant to Section 2-92-955 of the Municipal Code of Chicago, the Chief Procurement Officer is authorized to establish a contract-specific participation goal to veteran-owned small local businesses certified by the City (VBEs) if the contract has an estimated value in excess of \$10,000, and there are least three VBEs in each of one or more areas of specialty germane to the contract, and the contract-specific goal is not more than 1% of the contract's value.

Pursuant to MCC 2-92-535, the prime contractor may apply be awarded an additional 0.5 percent credit, up to a maximum of a total of 5 percent additional credit, for every 1 percent of the value of a contract self-performed by MBEs or WBEs, or combination thereof, that have entered into a mentoring agreement with the contractor or subcontractor-to-subcontractor mentoring agreement. This up to 5% may be applied to the Contract Specific Goals, or it may be in addition to the Contract Specific Goals.

As provided in Section 2-92-720(e), Diversity Credit Program credits awarded by the City's affirmative action advisory board may also be applied to the contract specific goals.

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

#### **Contract Specific Goals and Bids**

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs, WBEs, and VBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D);
- B. A VBE compliance plan demonstrating how the bidder plans to meet the VBE Contract Specific Goals (Schedule D-V); and/or
- C. Documentation of Good Faith Efforts (Schedule H).

If a bidder's compliance plan falls short of the Contract Specific Goals, the bidder must include either a Schedule H demonstrating that it has made Good Faith Efforts to find MBE, WBE, and VBE firms to participate or a request for a reduction or waiver of the goals.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded the contract:

**MBE Contract Specific Goal: [SEE BOOK 2]**  
**WBE Contract Specific Goal: [SEE BOOK 2]**  
**VBE Contract Specific Goal: [SEE BOOK 2]**

This Contract Specific Goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE, WBE, and VBE Contract Specific Goals shall be percentages of the bidder's total base bid. However, the MBE, WBE, and VBE Contract Specific Goals shall apply to the total value of this contract, including all amendments and modifications.

### **Contract Specific Goals and Contract Modifications**

1. The MBE, WBE, and VBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with MBEs, WBEs, and VBEs to meet the Contract Specific Goals.
  - a. Contractor must assist the Construction Manager or user Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for MBE, WBE, or VBE participation and at what rates.
  - b. Contractor must produce a statement listing the MBEs/WBEs/VBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no MBE/WBE/VBE participation is available, an explanation of good faith efforts to obtain participation must be included.
2. The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

## **II. Definitions**

"Area of Specialty" means the description of a MBE's, WBE's, or VBE's activity that has been determined by the Chief Procurement Officer to be most reflective of the firm's claimed specialty or expertise. Each MBE, WBE, and VBE letter of certification contains a description of the firm's Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE, WBE, or VBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs, WBEs, and VBEs to perform the work proposed.

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC 2-92-586.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

“Chief Procurement Officer” or “CPO” means the chief procurement officer of the City of Chicago or his or her designee.

“Commercially Useful Function” means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

“Construction Contract” means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

“Contract Specific Goals” means the subcontracting goals for MBE, WBE, and VBE participation established for a particular contract.

“Contractor” means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

“Directory” means the Directory of Certified Firms maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs, WBEs, and VBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBE, WBE, and VBE firms.

“Good Faith Efforts” means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program’s requirements.

“Joint venture” means an association of a MBE, WBE, or VBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE, WBE, or VBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

“Mentor-Protégé Agreement” means an agreement between a prime and MBE or WBE subcontractor (“Mentoring Agreement”), or an agreement between a prime’s subcontractor and MBE or WBE subcontractor (“Subcontractor-to-Subcontractor Mentoring Agreement”), pursuant to MCC 2-92-535, that is approved by the City of Chicago and complies with all requirements of MCC 2-92-535 and any rules and regulations promulgated by the Chief Procurement Officer.

“Minority-owned Business Enterprise” or “MBE” means a firm awarded certification as a small, local minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as an MBE by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

“Supplier” or “Distributor” refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other

establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

“Veteran-owned Business Enterprise” or “VBE” means a firm awarded certification as a veteran-owned small local business in accordance with the City ordinances and Regulations. It does not mean a firm that has been found to be ineligible or which has been decertified by the City.

“Women Business Enterprise” or “WBE” means a firm awarded certification as a small, local women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a WBE by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

### **III. Joint Ventures**

The formation of joint ventures to provide MBEs, WBEs, and VBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture for MBE or WBE credit may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE. A joint venture for VBE credit may consist of any combination of VBEs and non-certified firms as long as one member is a VBE.

- A. The joint venture may be eligible for credit towards the Contract Specific Goals only if:
1. The MBE, WBE, or VBE joint venture partner’s share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
  2. The MBE, WBE, or VBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
  3. Each joint venture partner executes the bid to the City; and
  4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) or VBE credit for work performed by VBE joint venture partners equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE, WBE, or VBE partner) perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE, WBE, or VBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs, WBEs, and VBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: MBE/WBE/VBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any MBE, WBE, or VBE as a joint venture partner, the bidder must submit with its bid the appropriate Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE, WBE, or VBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's, WBE's, or VBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the MBE's, WBE's, or VBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the MBE, WBE, or VBE joint venture partner; and
4. The MBE's, WBE's, or VBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

**NOTE:** Vague, general descriptions of the responsibilities of the MBE, WBE, or VBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE, WBE, or VBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

**IV. Counting MBE, WBE, and VBE Participation Towards the Contract Specific Goals**

Refer to this section when preparing the MBE/WBE and VBE compliance plans and completing Schedule D-1 and D-V for guidance on what value of the participation by MBEs, WBEs, and VBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom an MBE, WBE, or VBE subcontracts out any portion of its work and other factors.

**Firms that are certified as both MBE and WBE, MBE and VBE, WBE and VBE, or any combination thereof may only be listed on a bidder's compliance plan as either a MBE, WBE, or a VBE to demonstrate compliance with the Contract Specific Goals.** For example,



a firm certified as both a MBE and a WBE may only listed on the bidder's compliance plan under one of the categories, but not both. Additionally, if a firm that is certified as both a MBE and a WBE, MBE and VBE, WBE and VBE or any combination thereof could not self-perform 100% of a contract, it would have to show good faith efforts to meet the Contract Specific Goals by including in its compliance plan work to be performed by another MBE, WBE, or VBE firm, depending on which certification that dual-certified firm chooses to count itself as.

- A. Only expenditures to firms that perform a **Commercially Useful Function** as defined above may count toward the Contract Specific Goals.
  - 1. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  - 2. A MBE, WBE, or VBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE, WBE, or VBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs, WBEs, or VBEs do not participate, to determine whether non-MBE, non-WBE, and non-VBE firms perform the same function in the marketplace to make a determination.
- B. Only the value of the dollars paid to the MBE, WBE, or VBE firm for work that it performs in its **Area of Specialty** in which it is certified counts toward the Contract Specific Goals.

**Only payments made to MBE, WBE, and VBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.**

- C. If the MBE, WBE, or VBE performs the work itself:
  - 1. 100% of the value of work actually performed by the MBE's, WBE's, or VBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE, WBE, or VBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that a MBE, WBE, or VBE subcontracts to a non-certified firm counts toward the Contract Specific Goals
- D. If the MBE, WBE, or VBE is a manufacturer:
  - 1. 100% of expenditures to an MBE, WBE, or VBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- E. If the MBE, WBE, or VBE is a distributor or supplier:
  - 1. 60% of expenditures for materials and supplies purchased from an MBE, WBE, or VBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- F. If the MBE, WBE, or VBE is a broker:
  - 1. 0% of expenditures paid to brokers will be counted toward the Contract Specific Goals.

2. As defined above, Brokers provide no commercially useful function.
- G. If the MBE, WBE, or VBE is a member of the joint venture contractor/bidder:
1. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE, WBE, or VBE performs with its own forces toward the Contract Specific Goals.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE, WBE, or VBE firm's percentage of participation in the joint venture as described in Schedule B.
  2. Note: a joint venture may also count the dollar value of work subcontracted to other MBEs, WBEs, and VBEs, however, work subcontracted out to non-certified firms may not be counted.
- H. If the MBE, WBE, or VBE subcontracts out any of its work:
1. 100% of the value of the work subcontracted to other MBEs, WBEs, or VBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  2. 0% of the value of work that a MBE, WBE, or VBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by C.1. above).
  3. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  4. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  5. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**V. Procedure to Determine Bid Compliance**

The following Schedules and requirements govern the bidder's or contractor's MBE/WBE and VBE proposal:

- A. Schedule B: MBE/WBE/VBE Affidavit of Joint Venture

1. Where the bidder's Compliance Plan includes the participation of any MBE, WBE, or VBE as a joint venture partner, the bidder must submit with its bid the appropriate Schedule B and the proposed joint venture agreement. See Section III above for detailed requirements.

B. Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor or Supplier

The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D. Suppliers must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C has been submitted with the bid, an executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening.

C. Schedule D: Compliance Plan Regarding MBE and WBE Utilization

The bidder must submit a Schedule D with the bid. An approved Compliance Plan is required before a contract may commence.

The Compliance Plan must commit to the utilization of each listed MBE and WBE. The bidder is responsible for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

D. Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago or Cook County, Illinois, must be submitted with the bid.

A Letters of Certification includes a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

E. The following Schedules and described documents constitute the bidder's VBE proposal, and must be submitted in accordance with the guidelines stated:

- (1) Schedule C-V: Letter of Intent from VBE to Perform as Subcontractor, Supplier and/or Consultant.

The bidder must submit the appropriate Schedule C-V with the bid for each VBE included on the Schedule D-V. Suppliers must submit the Schedule C-V for Suppliers, first tier subcontractors must submit a Schedule C-V for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C-V for second tier Subcontractors. Each Schedule C-V must be executed by each VBE and accurately detail the work to be performed by the VBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the VBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the VBE in its Area of Specialty. If a facsimile copy of the Schedule C-V has been submitted with the bid, an executed original Schedule C-V must be submitted by the bidder for each VBE included on the Schedule D-V within five business days after the date of the bid opening.

Failure to submit a completed Schedule C-V in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

- (2) Letters of Certification.

A copy of each proposed VBE firm's current VBE Letter of Certification from the City must be submitted with the bid/proposal. All VBE Letters of Certification issued by the City of Chicago include a statement of the VBE firm's Area of Specialty. The VBE firm's scope of work, as detailed by their Schedule C-V, must conform to their stated Area of Specialty. Letters of Certification for VBEs that the City has found to be ineligible or decertified will not be accepted.

- (3) Schedule B: Affidavit of Joint Venture, and Joint Venture Agreements (if applicable).

If the bidder's VBE proposal includes the participation of a VBE as joint venture on any tier (either as the bidder or as a subcontractor), the bidder must provide a copy of the joint venture agreement and a Schedule B along with all other requirements listed in Article III, "Joint Ventures," above. In order to demonstrate the VBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the VBE; and (3) the commitment of management, supervisory and operative personnel employed by the VBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

- (4) Schedule D-V: Required Schedules Regarding VBE Utilization

Bidders must submit, together with the bid, a completed Schedule D-V committing them to the utilization of each listed VBE firm. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the VBE commitment in accordance with the provisions herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each VBE firm included on their Schedule D-V. The total dollar commitment to proposed VBEs must at least equal the VBE goal. Bidders are responsible for calculating the dollar equivalent of the VBE goals as percentages of their total base bids or in the case of Term Agreements, depends upon requirements agreements and blanket

agreements, as percentages of the total estimated usage. All commitments made by the bidder's Schedule D-V must conform to those presented in the submitted Schedule C-V. If Schedule C-V is submitted after the opening, the bidder may submit a revised Schedule D-V (executed and notarized to conform with the Schedules C-V). Bidders shall not be permitted to add VBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional VBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, as determined by the Chief Procurement Officer in her sole discretion, bidders will not be allowed to reduce the dollar commitment made to any VBE in order to achieve conformity between the Schedules C-V and D-V.

All commitments for joint venture agreements must be delineated in the Schedule B.

F. Schedule F: Report of Subcontractor Solicitations

A Schedule F must be submitted with the bid, documenting all subcontractors and suppliers solicited for participation on the contract by the bidder. Failure to submit the Schedule F may render the bid non-responsive.

G. Schedule H: Documentation of Good Faith Efforts

1. If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of its Schedule H.
2. If the bidder submits a Compliance Plan indicating that the bidder will meet the Contract Specific Goals, and, after review of the bidder's Compliance plan, the City determines that the bidder has not met the Contract Specific Goals, in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
3. Documentation must include but is not necessarily limited to:
  - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs, WBEs, and VBEs;
  - b. A listing of all MBEs, WBEs, and VBEs contacted for the bid solicitation that includes:
    - i. Names, addresses, emails and telephone numbers of firms solicited;
    - ii. Date and time of contact;
    - iii. Person contacted;
    - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
  - c. Evidence of contact, including:
    - i. Project identification and location;
    - ii. Classification/commodity of work items for which quotations were sought;
    - iii. Date, item, and location for acceptance of subcontractor bids;
    - iv. Detailed statements summarizing direct negotiations with appropriate MBEs, WBEs, and VBEs for specific portions of the work and indicating why agreements were not reached.
    - v. Bids received from all subcontractors.

- d. Documentation of bidder or contractor contacts with at least one of the Assist Agencies on Attachment A.
- H. Agreements between a bidder or contractor and an MBE, WBE, or VBE in which the MBE, WBE, or VBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- I. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE, WBE, or VBE. Failure to cooperate may render the bid non-responsive.
- J. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- K. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan, and provide copies of each subcontract agreement or purchase order to the Department of Procurement Services upon request.
- L. Any applications for City approval of a Mentor Protégé agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

**VI. Demonstration of Good Faith Efforts**

- A. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
- B. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:
  - 1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate MBE/WBE/VBE firms certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs, WBEs, or VBEs.
  - 2. Advertise the contract opportunities in media and other venues oriented toward MBEs, WBEs, and VBEs.
  - 3. Provide interested MBEs, WBEs, or VBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - 4. Negotiate in good faith with interested MBEs, WBEs, or VBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs, WBEs, and VBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.

5. Not reject MBEs, WBEs, or VBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's, WBE's, or VBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
  6. Make a portion of the work available to MBE, WBE, or VBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE, WBE, or VBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
  7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
  8. Select portions of the work to be performed by MBEs, WBEs, or VBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE, WBE, or VBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.
  9. Make efforts to assist interested MBEs, WBEs, or VBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
  10. Make efforts to assist interested MBEs, WBEs, or VBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
  11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs, WBEs, or VBEs.
- C. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Chief Procurement Officer.

## **VII. Changes to Compliance Plan**

- A. No changes to the Compliance Plan or contractual MBE, WBE, and VBE commitments or substitution of MBE, WBE, or VBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE, WBE, or VBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

- B. Substitutions of a MBE, WBE, or VBE subcontractor shall be permitted only on the following basis:
1. Unavailability after receipt of reasonable notice to proceed;
  2. Failure of performance;
  3. Financial incapacity;
  4. Refusal by the subcontractor to honor the bid or proposal price or scope;
  5. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  6. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  7. The subcontractor's withdrawal of its bid or proposal; or
  8. De-certification of the subcontractor as an MBE, WBE, or VBE. (Graduation from the MBE/WBE or VBE program does not constitute de-certification.)
  9. Termination of a Mentor Protégé Agreement.
- C. If it becomes necessary to substitute an MBE, WBE, or VBE or otherwise change the Compliance Plan, the procedure will be as follows:
1. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE, WBE, or VBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE, WBE, or VBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  2. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  3. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting an MBE, WBE, or VBE subcontractor. Documentation of a replacement MBE, WBE, or VBE, or of good faith efforts, must meet the requirements in sections V and VI. If the MBE, WBE, or VBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE, non-WBE, or non-VBE.
  4. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs, WBEs, or VBEs have a fair opportunity to bid on the new scope of work.



5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
- D. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE/VBE contract requirements.

## **VIII. Reporting and Record Keeping**

- A. During the term of the contract, the Contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE, WBE, and VBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE, WBE, and VBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Chief Procurement Officer.
- B. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and/or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE, WBE, and VBE. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15<sup>th</sup>) day of each month.
- C. Once the prime contractor has reported payments made to each MBE, WBE, and VBE, including zero dollar amount payments, the MBE, WBE, or VBE will receive an email and/or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20<sup>th</sup> day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25<sup>th</sup> of each month or payments may be withheld.
- D. All subcontract agreements between the contractor and MBE/WBE/VBE firms or any first tier non-certified firm and lower tier MBE/WBE/VBE firms must contain language requiring the MBE/WBE/VBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

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

- E. The Chief Procurement Officer or any party designated by the, Chief Procurement Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE, WBE, and VBE participation and the status of any MBE, WBE, or VBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- F. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs, WBEs, and VBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **IX. Non-Compliance**

- A. Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE, WBE, or VBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE, WBE, or VBE was a factor in the award of the contract and such status was misrepresented by the contractor.
- B. Payments due to the contractor may be withheld until corrective action is taken.
- C. Pursuant to 2-92-740, or 2-92-955, as applicable, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.
- D. The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740 of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

## **X. Arbitration**

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE, WBE, or VBE may recover damages, suffered by such entity as a result of being underutilized, from the contractor.

Disputes between the contractor and the MBE, WBE, or VBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE, WBE, or VBE. Participation in such arbitration is a material provision of the Construction Contract to which these Special Conditions are an Exhibit. This provision is intended for the benefit of any MBE, WBE, or VBE affected by the contractor's failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and an MBE, WBE, or VBE. Failure by the Contractor to participate in any such arbitration is a material breach of the Construction Contract.

An MBE, WBE, or VBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties; however, as noted above, reasonable expenses, including the arbitrator's fees, may be recoverable by a prevailing MBE, WBE, or VBE.

The MBE, WBE, or VBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE, WBE, or VBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

**XI. Equal Employment Opportunity**

Compliance with the requirements set forth in these Regulations will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.



# CITY OF CHICAGO ASSIST AGENCY LIST

Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

<p><b>Chatham Business Association Small Business Dev. *</b>              800 E. 78<sup>th</sup> Street              Chicago, IL 60619              773-994-5006              773-855-8905  <a href="mailto:admin@cbaworks.org">admin@cbaworks.org</a>  <a href="http://www.cbaworks.org">www.cbaworks.org</a>              Maintains list of certified firms: Yes              Provides training for businesses: Yes</p>	<p><b>Chicago Minority Supplier Development Council Inc. *</b>              105 W. Adams, Suite 2300              Chicago, IL 60603-6233              312-755-8880              312-755-8890 Fax  <a href="mailto:cjordan@chicagomsdc.org">cjordan@chicagomsdc.org</a>  <a href="http://www.chicagomsdc.org">www.chicagomsdc.org</a>              Maintains list of certified firms: Yes              Provides training for businesses: Yes</p>
<p><b>Chicago Urban League *</b>              4510 S. Michigan Ave.              Chicago, IL 60653              773-285-5800  <a href="mailto:jjohnson@chiul.org">jjohnson@chiul.org</a>              Maintains list of certified firms: Yes              Provides training for businesses: Yes</p>	<p><b>Chicago Women in Trades (CWIT)</b>              2444 W. 16<sup>th</sup> Street              Chicago, IL 60608              312-942-1444              Jayne Vellinga, Executive Director  <a href="mailto:jvellinga@cwit2.org">jvellinga@cwit2.org</a>  <a href="http://www.chicagowomenintrades2.org">www.chicagowomenintrades2.org</a>              Maintains list of certified firms: No              Provides training for businesses: Yes</p>
<p><b>Contractor Advisors Business Development Corp. *</b>              1507 E. 53<sup>rd</sup> Street, Suite 906              Chicago, IL. 60615              312-436-0301  <a href="mailto:info@contractoradvisors.us">info@contractoradvisors.us</a>  <a href="http://www.contractoradvisors.us">www.contractoradvisors.us</a>              Maintains list of certified firms: Yes              Provides training for businesses: Yes</p>	<p><b>Cosmopolitan Chamber of Commerce</b>              1631 S. Michigan Avenue Unit 101              Chicago, IL. 60616              312-971-9594  <a href="mailto:eroper@cosmochamber.org">eroper@cosmochamber.org</a>  <a href="http://www.cosmochamber.org">www.cosmochamber.org</a>              Maintains list of certified firms: Yes              Provides training for businesses: Yes</p>
<p><b>Council of Black Architecture and Engineering Companies (Formerly NOME)*</b>              1 South Wacker, Suite 2650              Chicago, IL 60606              312-960-1239  <a href="mailto:msutton@infrastructure-eng.com">msutton@infrastructure-eng.com</a>              Maintains list of certified firms: Yes              Provides training for businesses: Yes</p>	<p><b>Do For Self Community Development Co. *</b>              8659 S. Ingleside Ave.,              Chicago, IL 60619              773-356-7661  <a href="mailto:dennis@doforself.org">dennis@doforself.org</a>  <a href="http://www.doforself.org">www.doforself.org</a>              Maintains list of certified firms: No              Provides training for businesses: Yes</p>
<p><b>Elite Service Disabled Veteran Owned Business Network</b>              420 Lake Cook Rd, Ste 104              Deerfield, IL 60015              847-453-8890  <a href="mailto:jscifers@scigon.com">jscifers@scigon.com</a>  <a href="http://www.elitesdvob.org">www.elitesdvob.org</a>              Maintains list of certified firms: Yes              Provides training for businesses: Yes</p>	<p><b>Far South Community Development Corporation</b>              9923 S. Halsted Street, Suite D              Chicago, IL 60628              773-941-4833              773-941-5252  <a href="mailto:lacy@farsouthcdc.org">lacy@farsouthcdc.org</a>  <a href="http://www.farsouthcdc.org">www.farsouthcdc.org</a>              Maintains list of certified firms: No              Provides training for businesses: Yes</p>

\*Prime Contractors should contact agency with subcontracting opportunities to connect certified firms.



# CITY OF CHICAGO

## ASSIST AGENCY LIST

Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

<p><b>Federation of Women Contractors *</b>          4210 W. Irving Park Road,          Chicago, IL 60641          312-360-1122  <a href="mailto:info@fwcchicago.com">info@fwcchicago.com</a>  <a href="http://www.fwcchicago.com">www.fwcchicago.com</a>          Maintains list of certified firms: Yes          Provides training for businesses: No</p>	<p><b>Fresh Start Home Community Development Corp.</b>          5168 S. Michigan Avenue, 4N          Chicago, IL 60615          773-312-3797          855-270-4175  <a href="mailto:Info@FreshStartNow.us">Info@FreshStartNow.us</a>  <a href="http://www.FreshStartNow.us">www.FreshStartNow.us</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>
<p><b>Greater Southwest Development Corporation</b>          2601 W. 63<sup>rd</sup> Street          Chicago, IL 60629          773-362-3373  <a href="mailto:c.james@greatersouthwest.org">c.james@greatersouthwest.org</a>  <a href="http://www.greatersouthwest.org">www.greatersouthwest.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>	<p><b>Hispanic American Construction Industry Association (HACIA) *</b>          650 W. Lake St., Unit 415          Chicago, IL 60661          312-575-0389          312-575-0389  <a href="mailto:perez@haciaworks.org">perez@haciaworks.org</a>  <a href="http://www.haciaworks.org">www.haciaworks.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>
<p><b>Illinois State Black Chamber of Commerce *</b>          411 Hamilton Blvd., Suite 1404          Peoria, Illinois 61602          309-740-4430          309-672-1379  <a href="mailto:finance@ILBCC.org">finance@ILBCC.org</a>  <a href="http://www.ilbcc.org">www.ilbcc.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>	<p><b>Illinois Hispanic Chamber of Commerce *</b>          222 Merchandise Mart Plaza, Suite 1212 c/o 1871          Chicago, IL 60654          312-425-9500  <a href="mailto:info@ihccbbusiness.net">info@ihccbbusiness.net</a>  <a href="http://www.ihccbbusiness.net">www.ihccbbusiness.net</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>
<p><b>JLM Business Development Center*</b>          2622 W. Jackson Boulevard          Chicago, IL 60612          773-826-3064          773-359-4021 Fax  <a href="mailto:lady930@prodigy.net">lady930@prodigy.net</a>  <a href="http://www.jlmcenter.org">www.jlmcenter.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>	<p><b>LGBT Chamber of Commerce of Illinois *</b>          3179 N. Clark St., 2nd Floor          Chicago, IL 60657          773-303-0167          773-303-0168  <a href="mailto:admin@lgbtcc.com">admin@lgbtcc.com</a>  <a href="http://www.lgbtcc.com">www.lgbtcc.com</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>

\*Prime Contractors should contact agency with subcontracting opportunities to connect certified firms.



# CITY OF CHICAGO ASSIST AGENCY LIST

Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

<p><b>Native American Chamber of Commerce of Illinois</b>          100 N. Riverside Plaza, Suite 1670          Chicago, IL 60606          630-926-1700  <a href="mailto:info@nacc-il.org">info@nacc-il.org</a>  <a href="http://www.nacc-il.org">www.nacc-il.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>	<p><b>NDIGO Foundation</b>          329 W. 18<sup>th</sup> Street, Ste 613          Chicago, IL 60616          312-264-6272  <a href="mailto:hhartman@ndigo.com">hhartman@ndigo.com</a>  <a href="http://www.ndigo.com">www.ndigo.com</a>          Maintains list of certified firms: No          Provides training for businesses: Yes</p>
<p><b>Rainbow/PUSH Coalition *</b>          930 E. 50<sup>th</sup> Street          Chicago, IL 60615          773-255-9067          773-256-2768  <a href="mailto:jmitchell@rainbowpush.org">jmitchell@rainbowpush.org</a>  <a href="http://www.rainbowpush.org">www.rainbowpush.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>	<p><b>RTW Veteran Center *</b>          7415 E. End, Suite 120          Chicago, IL 60649          800-974-2808          866-873-2494 Fax  <a href="mailto:rtwvetcenter@yahoo.com">rtwvetcenter@yahoo.com</a>  <a href="http://www.rtwvetcenter.org">www.rtwvetcenter.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>
<p><b>South Shore Chamber, Inc. *</b>          1750 E. 71<sup>st</sup> Street          Chicago, IL 60649-2000          773-955- 9508          773-955-9554          Tonya Trice, Executive Director  <a href="mailto:info@southshorechamberinc.org">info@southshorechamberinc.org</a>  <a href="http://www.southshorechamberinc.org">www.southshorechamberinc.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>	<p><b>Sustainable Options for Urban Living, Inc. (SOUL)</b>          11603 S. Throop Street          Chicago, IL 60643          773-250-1770 Ext 702          773 250-1770  <a href="mailto:Cyndi@soul-program.com">Cyndi@soul-program.com</a>  <a href="http://www.soul-program.com">www.soul-program.com</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>
<p><b>The Monroe Foundation</b>          1547 South Wolf Road          Hillside, Illinois 60162          773-315-9720  <a href="mailto:omonroe@themonroefoundation.org">omonroe@themonroefoundation.org</a>  <a href="http://www.themonroefoundation.org">www.themonroefoundation.org</a>          Maintains list of certified firms: No          Provides training for businesses: Yes</p>	<p><b>Turn 2 Growth</b>          15475 S. Park          South Holland, IL 60473          708-913-4700  <a href="mailto:info@turn2growth.org">info@turn2growth.org</a>  <a href="http://www.turn2growth.org">www.turn2growth.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>

*\*Prime Contractors should contact agency with subcontracting opportunities to connect certified firms.*



# CITY OF CHICAGO ASSIST AGENCY LIST

Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

<p><b>US Minority Contractors Association, Inc. *</b>          1250 S. Grove Ave. Suite 200          Barrington, IL 60010          847-352-5010          847-382-1787  <a href="mailto:larry.bullock@usminoritycontractors.org">larry.bullock@usminoritycontractors.org</a>  <a href="http://www.USMinorityContractors.org">www.USMinorityContractors.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>	<p><b>Women’s Business Development Center *</b>          8 S. Michigan Ave., Suite 400          Chicago, IL 60603          312-853-3477x220          312-853-0145  <a href="mailto:edimenco@wbdc.org">edimenco@wbdc.org</a>  <a href="http://www.wbdc.org">www.wbdc.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: Yes</p>
<p><b>Women Construction Owners &amp; Executives (WCOE) *</b>          Chicago Caucus          308 Circle Avenue          Forest Park, IL 60130          708-366-1250  <a href="mailto:mkm@mkmservices.com">mkm@mkmservices.com</a>  <a href="http://www.wcoeusa.org">www.wcoeusa.org</a>          Maintains list of certified firms: Yes          Provides training for businesses: No</p>	

*\*Prime Contractors should contact agency with subcontracting opportunities to connect certified firms.*

## **XXIV. Illinois Environmental Protection Agency (IEPA) Requirements**

### **A. IEPA Loan Provisions**

1. This project will be funded in part or in whole by a loan (IEPA Loan) from the Illinois Environmental Protection Agency (IEPA).
  - a. For water projects, the contract between the City of Chicago and the Contractor will be subject to regulations contained in the procedures for loans from the Public Water Supply Loan Program (35 IL Admin. Code 662)
  - b. For sewer projects, the contract between the City of Chicago and the Contractor will be subject to regulations contained in the procedures for loans from the Water Pollution Control Loan Program: Wastewater (35 IL Admin. Code 365).
2. Additional Requirements for Payment for Changes [35 IL Admin. Code 365.620, 662.620)]. For each request for payment for change, Contractor shall submit data required in Terms And Conditions for Construction Contract, Department of Water Management Section XIII in such detail to enable the City of Chicago to ascertain necessity and reasonableness of costs and amounts proposed, and the allowability and eligibility of costs proposed for payment by the IEPA Loan.
3. Audit: Access to Records [35 IL Admin. Code 365.620(f), 662.620(f)]
  - a. The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on the work (including portion funded by the IEPA Loan) consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Contractor shall also maintain the financial information and data used by the Contractor in preparation or support of any cost submissions required for changes as described above and in the Contract Documents, and a copy of the cost summary submitted to the City of Chicago. The Illinois Auditor General, the City of Chicago, IEPA, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The Contractor shall provide facilities for access and inspection.
  - b. For a formally advertised, competitively awarded, fixed price contract, the Contractor shall include access to records as specified above for all negotiated contract changes, change orders and contract amendments in excess of \$25,000 that affect the contract price. In the case of all other price contracts, the Contractor shall agree to include access to records as specified in subsection 3.a above in all his contracts and all tier subcontracts for contract changes, change orders and contract amendments in excess of \$25,000 that are directly related to project performance.
  - c. Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Public Accountants Professional Standards.



- d. The Contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection 3.a above. Where the audit concerns the Contractor, the auditing agency shall afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.
- e. The records required by subsection 3.a above shall be maintained and made available during performance of the work being funded by the IEPA Loan and for three years after the date of the final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs or items to which an audit exception has been taken, shall be maintained and made available for three years after resolution of such dispute, appeal, litigation, claim or exception.
- f. The right of access will generally be exercised with respect to financial records under:
  - (1) Negotiated prime contractors
  - (2) Negotiated contract changes, change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract: and
  - (3) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.
- g. The right to access will generally not be exercised with respect to a prime contract, subcontract or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract:
  - (1) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
  - (2) If there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of the contract or subcontract.

4. Additional Requirements for Subcontractors [35 IL Admin. Code 365.620(g), 662.620(g)]. The award or execution of all subcontracts by a prime Contractor and the procurement and negotiation procedures by the prime Contractor shall comply with the following:

- (1) All applicable provisions of federal, state and local law;
- (2) All provisions of this agreement and all provisions of IL State Law Title 35, subtitle F, Chapter II Part 662 regarding fraud and other unlawful or corrupt practices
- (3) All provisions of this agreement all provisions of IL State Law Title 35, subtitle F, Chapter II Part 662 with respect to access to facilities, records, and audit of records.
- (4) Certification by subcontractors of compliance with Federal Executive Order 12549 regarding debarment, suspension and other responsibility matters.

5. Additional Requirements With Respect To Contractor Bankruptcy [35 IL Admin. Code 365.620(h), 662.620 (h)]. In the event of Contractor bankruptcy, the City of Chicago will notify IEPA and will keep IEPA advised of any negotiations with the bonding company, including any proposed settlement. IEPA may participate in those negotiations and will advise the City of Chicago of the impact of any proposed settlement on the loan agreement between the City of Chicago and IEPA. The City of Chicago will be responsible for assuring that every appropriate

procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

6. IEPA Access [35 IL Admin. Code 365.620(i), 662.620(i)] The Contractor and all subcontractors shall provide IEPA representatives with access to the work. The Contractor or subcontractor shall provide facilities for access and inspection. IEPA or any authorized representative shall have access to any books, documents, papers and records that are pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions.
7. Disputes and Remedies [35 IL Admin. Code 365.640(c), 662.640(c)]. Disputes and Remedies shall be addressed in accordance with the Terms And Conditions for Construction Contract, Book 1. In accordance with IEPA loan requirements all claims, counter-claims, disputes and other matters in question between the loan recipient (City of Chicago) and the Contractor arising out of, or relating to a sub-agreement or its breach and not resolved in accordance with the Contract Documents shall be decided in a court of competent jurisdiction in the State.
8. Covenant Against Contingent Fees. In addition to other requirements of this agreement, Contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the City of Chicago, shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
9. Additional Requirements for Compliance with 40 CFR 33 – Non Discrimination. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR 33 in the award and administration of awarded under IEPA financial assistance agreements (IEPA loans). Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

#### 10. Additional Non-Collusion Provisions

- a. In addition to other requirements in this agreement, Contractor shall be subject to the following non-collusion provisions of 35 IL Administrative Code 365.620, 662.620.
- b. By submission of the bid, each bidder certifies, and in the case of a joint bid each party thereto certifies as to his or her own organization, that in connection with the bid:
  - i. The prices in the bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter related to the prices with any other bidder or with any other competitor;
  - ii. Unless otherwise required by law, the prices quoted in the bid have not knowingly been directly or indirectly disclosed to any other bidder or to any competitor prior to opening; and
  - iii. No attempt has been made or will be made by the bidder to

induce any other person or firm to submit or withhold a bid for the purpose of restricting competition. Also, each bidder shall submit a certification regarding compliance with Article 33E of the Illinois Criminal Code of 2012 [720ILCS 5/33E].

- c. Each person signing the bid shall certify that:
  - i. He or she is the person in the bidder's organization responsible for the decision as to the prices being bid and that he or she has not participated, and will not participate, in any action contrary to subsection b. above, or that
  - ii. He or she is not the person in the bidder's organization responsible for the decision as to the prices being bid but that he or she has been authorized to act as agent certifying that such persons have not participated, and will not participate, in any action contrary to subsection b. above and as their agent shall so certify. He or she shall also certify that he or she has not participated, and will not participate in any action contrary to subsection b. above.

1. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). As specified in the Non-Discrimination, Federal Requirements, Contractor shall meet requirements of Executive Order 11246. As part of IEPA Loan requirements, the text of Executive Order 11246 is included herein:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

The Bidder's attention is called to the "Equal Opportunity Clause" and "Standard Federal Equal Employment Opportunity Construction Contract Specifications" in Executive Order 11246 (see 41 CFR 60.4).

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation for each trade
	Insert goals * for each year <u>19.6%</u>	Insert goals * for each year <u>6.9%</u>

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the executive Order and the regulations of 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female

employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs \*\*\* within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is City of Chicago, Cook County, Illinois\*\*.

#### Notes

- \* Goals and time tables published from time to time by the Director, Office of Federal Contract Compliance Programs (OFCCP). Percentages for Cook County, Illinois included above provided by IEPA as published in the Federal Register Friday, October 3, 1980.
- \*\* Insert description of the geographical area where the contract is to be performed giving the state, county, and city, if any.
- \*\*\* For more information on these requirements and directions for submitting letters contact (information valid as of August, 2000): Office of Federal Contract Compliance Program, Region V Operation Branch, Kluczynski Federal Building, 230 South Dearborn Street, Room 570, Chicago, IL 60604, voice (312) 353-0335, Fax(312) 353-2813.

## **B. USEPA/IEPA Davis-Bacon Wage Guidance**

1. In addition to the Davis-Bacon (DB) wage requirements of this document the following provisions shall apply to all contracts above \$2,000 in value.

### a. Minimum wages.

- (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is included in Book 2 and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (2) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Davis Bacon wage determination from the U.S. Department of Labor's (DOL) web site, [www.wdol.gov](http://www.wdol.gov).

- (2) (a) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The USEPA Contract award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii) The classification is utilized in the area by the construction industry; and
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the City agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the City to IEPA. IEPA will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify or disapprove every additional classification action within 30 days of receipt and so advise IEPA or will notify IEPA within the 30-day period that additional time is necessary.
- (c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the City do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the

Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (2) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

b. Withholding, the City shall upon written request of the USEPA Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City, that is, the entity that receives the sub-grant or loan from IEPA. Such documentation shall be available on request of IEPA or USEPA. As to each payroll copy received, the City shall provide written confirmation in a form satisfactory to IEPA indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City for transmission to IEPA or USEPA, if requested by USEPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the City.
- (b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (i) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete.
  - (ii) That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
  - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work

performed, as specified in the applicable wage determination incorporated into the contract.

- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (2)(b) of this section.
  - (d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (3) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of IEPA, USEPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or IEPA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and trainees –

- (1) Apprentices. Apprentices will be permitted to work at less than predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the



applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (3) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

e. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

f. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the USEPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

g. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

h. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

2. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipients, IEPA, USEPA, the U.S. Department of Labor, or the employees or their representatives.

a. Certification of eligibility.

(1) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

2. The following additional Provision shall apply to for contracts with a value in excess of \$100,000.

a. Contract Work Hours and Safety Standards Act. This contract is subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These provisions are in addition to the clauses required by the Davis-Bacon requirements above or 29 CFF 4.6. As used in this paragraph, the terms laborers and mechanics shall include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clauses set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. The City, upon written request of the USEPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.
  - (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.
- b. The contractor or subcontractors shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the contractor or subcontractors for inspection, copying, or transcription by authorized representatives of the IEPA, USEPA and the Department of Labor, and the contractor or subcontractors will permit such representatives to interview employees during working hours on the job.

### 3. Davis-Bacon Compliance Verification

- a. The City will periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The City will use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from USEPA on request, and on the Department of Labor web site.
- b. The City will establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the City will conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The City will conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. The City will immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews will be conducted in confidence.
- c. The City will periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors and subcontractors are paying the appropriate wage rates. The City will establish and follow a spot check schedule based on its assessment of the risks of

noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the City will spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. The City will conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the City will verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

d. The City will periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S. Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item b. and c. above.

e. The City will immediately report potential violations of the DB prevailing wage requirements to the USEPA DB contact listed above and to the appropriated DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

### **C. American Iron and Steel**

The Contractor acknowledges to and for the benefit of the City and the State of Illinois (the "State") that it understands the goods and services under this Contract are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel"; that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Contract. The Contractor hereby represents and warrants to and for the benefit of the City and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the City or the State. Notwithstanding any other provision of this Contract, any failure to comply with this paragraph by the Contractor shall permit the City or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the City or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the City). While the Contractor has no direct contractual privity with the State, as a lender to the City for the funding of its project, the City and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.