

**REQUEST FOR QUALIFICATIONS (“RFQ”)  
FOR  
NATURAL GAS SUPPLY SERVICES**

Required for use and distributed by:

**CITY OF CHICAGO  
Department of Assets, Information, and Services  
Commissioner David Reynolds**



All Statements and Qualifications and other communications must be addressed and returned to:

City of Chicago  
Department of Assets, Information, and Services  
Attn: Diana Ballesteros, Contracts Coordinator  
2 North LaSalle Suite 200  
Chicago, Illinois 60602  
[Diana.Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org)

**QUALIFICATIONS MUST BE RECEIVED NO LATER  
THEN 4:00 P.M., CENTRAL TIME, ON  
September 13, 2021**

**LORI LIGHTFOOT  
MAYOR**

**DAVID REYNOLDS  
COMMISSIONER**

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**CITY OF CHICAGO**

**REQUEST FOR QUALIFICATIONS FOR  
NATURAL GAS SUPPLY SERVICES**

The City of Chicago (“City”) Department of Assets, Information, and Services (“AIS”) oversees the procurement and management of natural gas for more than 400 accounts behind Peoples Gas distribution system. This portfolio includes natural gas serving the facilities and operations of the City Department of Aviation, Water Management, Department of Transportation, Chicago Public Library, Chicago Police Department, Chicago Fire Department, and AIS, among others. These accounts collectively represent approximately 3.6 Million Decatherms (Dth) of municipal natural gas requirements annually.

Through this RFQ, the City intends to provide potential vendors with the opportunity to submit their qualifications in order to become pre-qualified to participate in an RFP as described herein to be released at a future date. Through the RFP, the City envisions contracting for Natural Gas Supply Services with a single vendor for an initial term beginning April 1, 2022 for up to 36 months, with subsequent renewal opportunities.

The City will give preference to responses that demonstrate how the sourcing of natural gas does not cause harm to environmentally sensitive areas or infringe on indigenous property rights by building new pipelines on indigenous land.

**I. INTRODUCTION AND OVERVIEW**

**A. Purpose of the RFQ**

The City, acting through the Department of Assets, Information and Services (“AIS”), invites the submission of Qualifications to provide Natural Gas Supply Services to the City. The intent of the RFQ is to pre-qualify companies capable of performing the Natural Gas Supply Services as described in this RFQ. Companies with expertise and demonstrated experience in providing these services, are invited to respond to this RFQ.

Qualified Respondent(s) must be willing to accept the City’s terms in Addendum 1 (“City Terms”) as well as Special Provisions to the NAESB Document see Exhibit 7 and shall perform all tasks and functions associated with the Services as described in this RFQ through a Request for Pricing (“RFP”) order process described in this RFQ. At the conclusion of the RFP, it is the City’s intent to contract with a single company to provide the Services for an initial term beginning April 1, 2022 for up to 36 months, with subsequent renewal opportunities.

The work contemplated is professional in nature. It is understood that the Contractor, whether acting as an individual, partnership, corporation, or other legal entity, is of professional status, licensed to perform in the State of Illinois and licensed for all applicable professional discipline(s) requiring licensing and will be governed by professional ethics in its relationship to the City. It is also understood that all reports, information, or data prepared or assembled by the Contractor under a contract awarded pursuant to this RFQ are confidential in nature and will not be made available to any individual or organization, except the City, without the prior written approval from the City.

The Contractor shall be financially solvent and each of its members, if a joint venture, its employees, agents or subconsultants of any tier shall be competent to perform the services required under this RFQ document.

In order to be deemed "Qualified," the Respondent must meet the evaluation criteria of this RFQ. Each Respondent that meets the criteria will be notified that it is deemed "Qualified". Qualified Respondents, furthermore, will be required to certify that they are in compliance with all of the evaluation criteria outlined in this RFQ at the time of their response to an RFP.

Firms or individuals wishing to be considered must submit Qualifications via email no later than **September 13, 2021** at 4:00 p.m. Central Time, addressed to:

City of Chicago  
Department of Assets, Information and Services (AIS)  
Attention: Diana Ballesteros, Contracts Coordinator  
[Diana Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org)

All materials related to the RFQ will be available on the internet at the following site:  
[www.cityofchicago.org/bids](http://www.cityofchicago.org/bids).

## **B. Definitions**

The following defined terms have the meanings specified below.

NOTE: If a defined term is used only once, then it may be defined within the context in which it appears in that paragraph or section.

**"Addendum"** means a revision of the RFQ Documents issued by the City prior to the due date for submitting Qualifications.

**"AIS"** means City of Chicago Department of Assets, Information and Services (AIS)

**"Agreement"** means the NAESB with Special Provisions as attached in this RFQ as Exhibit 5, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications, or revisions made in accordance with its terms.

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

**"Calendar Day"** means one full day, including weekdays and weekends.

**"City"** means City of Chicago

**"Clarification"** means the City's responses to questions submitted by Respondents which do not revise the requirements of the RFQ.

**"Commissioner"** means the Commissioner of the Department of Assets, Information, and Services (AIS), and any designated representative authorized in writing to act on the Commissioner's behalf.

**"Contractor"** means the Qualified Respondent selected by the Commissioner to perform the Services based upon their submission to an RFP for the Services.

**"Contract Term"** means the period of time during which the Contractor will perform the Services, as described in Section II. D. herein.

**“Evaluation Committee”** means the City Evaluation Committee appointed to review and assess all Qualifications and make its recommendations to the Commissioner concerning its review.

**“Minority Business Enterprise”** means a firm certified as a minority-owned business enterprise in accordance with the City Ordinances and regulations or a firm awarded certification as a minority-owned and controlled business by Cook County, Illinois.

**“Natural Gas Supply Services” or “Services”** means performance of all tasks, activities and deliverables relating to the provisions of such services as described in detail in Exhibit 1, Scope of Services, and performed by the Contractor.

**“Order”** means a Pricing Form accepted and approved in writing by the City after submission of the Pricing Form by a Qualified Respondent in response to a City Request for Pricing. The City envisions that the Order will take the form of the Transaction Confirmation included as part of Exhibit 5.

**“Pricing Form”** means complete price submissions by Qualified Respondents in response to the City’s Request for Pricing.

**“Qualified Respondent”** means the vendor(s) selected pursuant to the City’s RFQ process who are thereby eligible to respond to a subsequent RFP for Natural Gas Supply Services.

**“Response” or “Qualifications”** is the written content and documents submitted by a Respondent in response to this RFQ.

**“Respondent”** means the primary entity which submits Qualifications in response to this RFQ and may include subcontractors and other affiliates.

**“RFP”** means Request for Pricing.

**“RFQ”** means Request for Qualifications.

**“Women Business Enterprise”** means A firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations, or a firm awarded certification as a women-owned business by Cook County, Illinois.

## II. SERVICES AND PROCESS

### a) Requests for Pricing

Following the completion of this RFQ, the Commissioner intends to issue an RFP for Natural Gas Supply Services. The City is not responsible for the costs incurred by any Respondent in preparing their Response to this RFQ or their Pricing Form response to the RFP.

Following Qualified Respondent’s submission of a Pricing Form in response to an RFP, the Commissioner will review the submission(s) and may choose to accept an Order, thereby designating one Qualified Respondent as the Contractor.

All Orders are subject to the approval of the Commissioner and an Order will not become binding upon the City until it is approved, in writing, by the Commissioner. Following placement of an Order, a Purchase Order will be issued by the City.

## **b) Pricing Forms**

The Qualified Respondent may respond to an RFP by submitting a Pricing Form to the Commissioner which will consist of providing all requested information indicated by the City's RFP.

A Pricing Form satisfactory to the Commissioner must be signed on behalf of the City by the Commissioner before binding the City and Contractor as an Order. The Commissioner's decision to sign will be made on the basis of his expectation of best value to the City. The City's acceptance will be demonstrated by a signed Order issued by the Department. The Contractor will not commence services, and the City will not be liable for any costs incurred by or payments to the Contractor, without an Order so executed, followed by receipt by the Contractor of a Purchase Order from the City.

Qualified Respondents acknowledges and agree that the City either may select from among those Pricing Forms submitted in response to an RFP that Pricing Form which is in the best interests of the City or may reject any and all Qualifications submitted in response to this RFQ.

## **c) Description of Services**

The Services that the City seeks to acquire are described in Exhibit 1, Scope of Services.

## **d) Contract Term**

The Contract awarded pursuant to the RFP solicitation shall be for a base contract period of up to three (3) years beginning April 1, 2022, with two (2) one-year (1) extension options.

### **III. GENERAL INFORMATION AND GUIDELINES FOR RFQ RESPONSES**

#### **A. Communications Between the City and Respondents**

**Respondents must communicate only with AIS.** All questions or requests for clarification must be in writing, sent by e-mail, and directed to the attention of [Diana.Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org) and must be received by the date set out in the Timetable below.

The subject line of the e-mail must clearly indicate that the contents are "Questions and Request for Clarification" about the RFQ and are "Not a Proposal" and must refer to "Request for Qualifications ("RFQ") for Natural Gas Supply Services". No telephone calls will be accepted.

***UNAUTHORIZED CONTACT REGARDING THIS REQUEST FOR QUALIFICATION WITH ANY OTHER CITY EMPLOYEE MAY RESULT IN DISQUALIFICATION.***

#### **B. Submission Procedures**

Respondents are required to conduct the preparation of their Qualifications with professional integrity. Respondents must communicate only with AIS in connection with this procurement. Respondents are responsible for all errors and omissions incurred by Respondents in preparing their Qualifications. Respondents will not be allowed to alter their Qualifications after the Qualifications Due Date unless approved by AIS in writing.

Firms or individuals wishing to be evaluated for Qualification must submit one (1) electronic copy via e-mail of their Response to: [Diana.Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org).

**C. Procurement Timetable**

The timetable for the RFQ solicitation is summarized below. Note that these are target dates and are subject to change by the City.

Key Activity	Target Date	
City Issues RFQ	August 11, 2021	
Request for Clarifications	August 25, 2021	4 pm CT
City Response to Request for Clarifications	September 6, 2021	4 pm CT
Qualifications Due	September 13, 2021	4 pm CT
City Completes Review of Individual Qualifications including any follow-up	September 23, 2021	4 pm CT
Notification of Qualified Respondents	September 23, 2021	4 pm CT
City Issues RFP	September 23, 2021	4 pm CT
Pricing Forms Due	September 28, 2021	11 am CT
City Decision and Notification of Contractor	September 28, 2021	12 Noon CT

**D. Transparency Website: Trade Secrets**

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

To designate portions of the Qualifications as confidential, Respondent must:

1. Mark the cover page as follows: "This Response includes trade secrets or other proprietary data."
2. Mark each sheet or Data to be restricted with the following legend: "Confidential: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this RFQ."
3. Provide a **redacted copy of the entire Qualifications or Submission** as one .pdf format file via email to [Diana.Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org) for posting on the City's website. Respondent is responsible for properly and adequately redacting any Data which Respondent desires remain confidential. If entire pages or sections are removed, they must be represented by a page indicating that the page or section has been redacted.

Failure to provide the file in the specified format via email may result in the posting of an un-redacted copy.

Indiscriminate labeling of material as "Confidential" may be grounds for deeming Qualifications as non-responsive.

All Qualifications submitted to the City are subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* The City will make the final determination as to whether information, even if marked "Confidential," will be disclosed pursuant to a request under the Freedom of Information Act or valid subpoena. Respondent agrees not to pursue any cause of action against the City with regard to disclosure of information.

#### IV. ADDITIONAL CONDITIONS

- a) **Qualifications Submission Rules.** Respondents are required to conduct the preparation of their Qualifications with professional integrity. Respondents must communicate only with AIS in connection with this procurement. All questions must be submitted in writing as a request for clarification as per Section d and sent to the AIS RFQ Contact Person identified in Section c. No telephone calls will be accepted.

Respondents are responsible for all errors and omissions incurred by Respondents in preparing the Qualifications. Respondents will not be allowed to alter their Qualifications after the Qualifications Due Date unless approved by AIS in writing.

- b) **Respondent Representative.** Each Respondent shall be represented by a duly appointed and authorized representative ("Respondent Representative" or "Representative") for the purpose of submitting the Respondent's Qualifications; and later, if invited, to participate in the Contract negotiation process. The Respondent Representative shall have the power and authority to bind all members of the Respondent's team for the purposes of this RFQ.
- c) **AIS RFQ Contact Person.** During the entire Project procurement period, commencing with the issuance of this RFQ and up to the final award of contract, there can be no direct communications between Respondents and employees of the City other than the designated Contact Person for this RFQ. A Respondent that deviates from any of these requirements is subject to immediate disqualification from this RFQ process.

The designated Contact Person for the RFQ process is:

Diana Ballesteros

[Diana.Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org)

City of Chicago, Department of Assets, Information and Services

2 N. LaSalle St., Suite 200

Chicago, Illinois 60602

- d) **Respondent Request for Clarification.** Any Respondent that has questions as to the meaning of any part of this RFP or the Project, or who believes that the RFQ contains any error, inconsistency or omission, must submit its question or concern in a written Request for Clarification ("RFC"), by email to the Contact Person at [Diana.Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org).

RFCs must be received no later than the Request for Clarification deadline; see Section III - C. RFCs submitted to anyone other than the Contact Person, or by any other means other than e-mail will not be answered.



RFCs may be responded to by the City, at its discretion. The City reserves the right to respond to RFCs submitted after the deadlines set in this RFP, if such response is deemed by the City necessary; however, the City strongly discourages Respondents from submitting any RFCs past the stated deadline.

Respondents must clearly label any RFC it deems confidential and/or proprietary as such. At its discretion, AIS may provide any or all RFCs, without expressly identifying the originator, along with AIS's responses, to all Respondents.

AIS may rephrase questions as it deems appropriate and may consolidate similar questions. AIS will post any responses on its website. Some RFCs may be answered by an RFQ Addendum.

Responses to RFCs are not part of the RFQ and will not have the effect of amending the RFQ. Only responses that end up being incorporated as an Addendum to the RFQ will modify or amend the RFQ. To reiterate, AIS clarifications or responses to RFCs will have no force or effect whatsoever and shall not be relied upon by any Respondent. Any oral or written response (other than those addressed by Addenda) provided by AIS or its representatives in connection with the RFQ will not be binding on the City, nor will it change, modify, amend, or waive the requirements of the RFQ in any way.

It is the Respondent's obligation to seek clarification from AIS on any matter it considers to be unclear in accordance with this RFQ. AIS is not responsible for any misunderstanding by the Respondent regarding the RFQ, supporting or background information, responses to RFCs, or any other type of information provided, or communication made, by AIS.

- e) **Addenda.** If it becomes necessary to revise or expand upon any part of this RFQ, addenda will be issued and emailed to Respondents who RSVP to the pre-proposal webinar. Each addendum will also be incorporated as part of the RFQ documents. Failure to acknowledge addenda when submitting the Qualifications will render the Qualifications non-responsive. Any harm to the Respondent resulting from failure to obtain all necessary documents such as addenda, for whatever cause, will not be valid grounds for a protest against award(s) made under this RFP solicitation.
- f) **Use of Information.** AIS and its representatives make no representations or warranties, and there are no representations, warranties or conditions, either express or implied, statutory or otherwise, in fact or in law, with respect to the accuracy or completeness of this RFQ or any Addenda, appendices, data, materials, background information or documents related thereto, and AIS and its representatives will not be responsible for any claim, action, cost, loss, damage or liability whatsoever arising from any Respondent's reliance on or use of this RFQ or any other technical or historical addenda, appendices, data, materials, background information or documents provided, delivered or made available by AIS or its representatives.
- g) **No Responsibility for Costs.** The City is not responsible for costs or damages incurred by Respondents, member(s), partners, subcontractors, or other interested parties in connection with the RFP process, including, but not limited to, costs associated with preparing the Qualifications and of participating in any conferences, site visits, oral presentations, or negotiations.
- h) **Taxes Included in Pricing Forms.** With few exceptions, materials purchased by the City of Chicago are not subject to the Federal Excise Tax. The Illinois Retailers' Occupation Tax, Use Tax, and Municipal Retailers' Occupation Tax do not apply to materials or services purchased by the City of Chicago.

Respondents shall include all other applicable federal, state, and local taxes, direct or indirect, in their Pricing Forms.

- i) **Protests.** The Respondent shall submit any protests or claims regarding this solicitation to the Commissioner. A pre-RFQ protest must be filed no later than the five (5) City working days before the Qualifications Due Date, a pre-award protest must be filed no later than 10 City working days after the Qualifications Due Date, and a post-award protest must be filed no later than 10 City working days after the award of the contract.

Protests will be decided by the Commissioner. All protests or claims must set forth the name and address of the protester, the name of the RFQ the grounds for the protest or claim, and the course of action that the protesting party desires that the Commissioner take.

The Commissioner will follow the City of Chicago Department of Procurement Services' Solicitation and Contracting Process Protest Procedures ("Procedures"), available at: <https://www.chicago.gov/content/dam/city/depts/dps/ContractAdministration/StandardFormsAgreements/BidProtestRules12302013.pdf>.

- j) **Communications Among Respondents.** A Respondent shall not discuss or communicate, directly or indirectly, with any other Respondent, any information whatsoever regarding the preparation of its own Qualifications or the Qualifications of the other Respondent in a fashion that would contravene Applicable Law. Each Respondent shall prepare and submit its Qualifications independently and without any connection, knowledge, comparison of information, agreement, or arrangement, direct or indirect, with any other Respondent. This applies to Respondents, their Team Members, and their respective representatives.
- k) **Prohibition on Certain Contributions – Mayoral Exec. Order No. 2011-4.** No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other 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 Qualifications 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 Qualifications.

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.

l) **False Statements**

(a) 1-21-010 False Statements

Any Person who knowingly makes a false statement of material fact to the City in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the City for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the City sustains because of the person's violation of this section. A person who violates this section shall also be liable for the City's litigation and collection costs and attorney's fees. The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code. (Added Coun. J. 12-15-04, p. 39915, § 1; Amend Coun. J. 3-18-09, p. 56013, § 1)

(b) 1-21-020 Aiding and Abetting.

Any person who aids, abets, incites, compels or coerces the doing of any act prohibited by this chapter shall be liable to the City for the same penalties for the violation. (Added Coun. J. 12-15-04, p. 39915, § 1)

(c) 1-21-030 Enforcement.

In addition to any other means authorized by law, the corporation counsel may enforce this chapter by instituting an action with the department of administrative hearings. (Added Coun. J. 12-15-04, p. 39915, § 1)

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

- n) **Conflict of Interest.** If any Respondent (or any partner in a joint venture or partnership or any member of the limited liability company if the Respondent is a joint venture, partnership, LLP, or LLC) has assisted the City in the preparation of these RFQ documents such that provision of such assistance would give Respondent an unfair advantage or otherwise impair the integrity of the procurement process, or if Respondent has an organizational conflict of interest that might compromise Respondent's ability to perform the contract, that Respondent may be disqualified from submitting a proposal. If applicable, Respondent must provide a statement and information disclosing its participation with respect to the RFQ documents and/or potential organizational conflicts of interest.

Issues relating to conflicts or potential conflicts of interest will be considered on a case-by-case basis. If a Respondent has concerns regarding its potential conflicts of interest relative to this RFQ, the Respondent may send a letter addressed to the RFQ Primary Contact Person and the Commissioner, detailing the basis for its concern, and seeking guidance on this issue, based on its circumstances. The City will make every effort to respond in a timely fashion.

- o) **Interpretation.** In this RFQ, words in the singular include the plural and vice-versa and; words in one gender include all genders, all references to dollar amounts are to the lawful currency of the United States of America, and the words "include", "includes" or "including" means "include without limitation", "includes without limitation" and "including without limitation", respectively, and the words following "include", "includes" or "including" will not be considered to set forth an exhaustive list.

Unless a contrary meaning is specifically noted elsewhere, the words "as required," "as directed," "as permitted" and similar words used in the RFP mean that requirements, directions of and permission of the City are intended; similarly, the words "approved," "acceptable," "satisfactory" or words of like import mean "approved by," "acceptable to" or "satisfactory to" the City. Words "necessary," "proper" or words of like import as used with respect to extent, conduct or character of Services specified shall mean that the Services must be conducted in a manner or be of character which is "necessary" or "proper" in the opinion of the City.

Any headings in this RFQ are for convenience of reference only and do not define, limit, control or affect the meaning of the RFQ provisions. In this RFQ, unless the context otherwise requires, the terms "hereby," "herein," "hereof," "hereto," "hereunder" and any similar terms used in this RFP refer to this RFQ. All section references, unless otherwise expressly indicated, are to sections of this RFQ. All references to any Attachment or Exhibit or Addendum or document shall be deemed to include all supplements and/or amendments to any such documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this RFQ.

Unless explicitly otherwise stated herein, all references in this RFQ to AIS's "discretion" means AIS's unqualified subjective discretion and all references to the AIS's "judgment" means AIS's unqualified subjective judgment.

- p) **State of Illinois Equal Employment Opportunity Clause.** City Contractors are subject to the requirements of 44 Ill. Admin. Code 750 Appendix A, including the requirement to hire new employees in a way that minorities and women are not underutilized. Appendix A provides as follows:

#### EQUAL EMPLOYMENT OPPORTUNITY

In the event of the Respondent's non-compliance with the provisions of this Equal Employment Opportunity Clause or the 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:

- 1) That he, she, or they 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, she, or they will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.
  - 2) That, if he, she, or they hires additional employees to perform this contract or any portion of this contract, he, she, or they will determine the availability (in accordance with this Part) of minorities and women in the areas from which he, she, or they may reasonably recruit and he, she, or they will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.
  - 3) That, in all solicitations or advertisements for employees placed by him or her or on his or her behalf, he, she, or they 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.
  - 4) That he, she, or they will send to each labor organization or representative of workers with which he, she, or they have or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the Contractor's obligations under the Act and this Part. If any labor organization or representative fails or refuses to cooperate with the Contractor in his or her efforts to comply with the Act and this Part, the Contractor will promptly notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations under the contract.
  - 5) That he, she, or they will submit reports as required by this Part, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects, comply with the Act and this Part.
  - 6) That he, she, or they will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Act and the Department's Rules and Regulations.
  - 7) That he, she, or they 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 contracting agency and the Department 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.
- q) **Property of Submissions.** Qualifications will become the property of the City and will not be returned to the Respondent.

- r) **City Reserved Rights.** The City may investigate the qualifications of any Respondent under consideration, may require confirmation of information furnished by a Respondent and may require additional evidence of qualifications to perform obligations under the Contract. The City reserves the right, in its discretion, to:
- i. Modify any dates set or projected in the RFQ and extend any deadlines;
  - ii. Cancel, modify or withdraw the RFQ in whole or in part;
  - iii. Terminate this procurement and commence a new procurement for part or all of the RFQ;
  - iv. Terminate evaluations of Qualifications received at any time, in its discretion;
  - v. Suspend, discontinue or terminate negotiations of the Contract at any time, elect not to commence negotiations of the Contract with any responding Respondent and engage in negotiations with other than the highest ranked Respondent;
  - vi. Modify the procurement process (with appropriate notice to Respondents);
  - vii. Waive or permit corrections to data submitted with any response to the RFQ until such time as AIS and the City declares in writing that a particular stage or phase of its review of the responses to the RFQ has been completed and closed;
  - viii. Permit submittal of addenda and supplements to data previously provided in Qualifications pursuant to a request for clarification issued by the City until the City declares that a particular stage or phase of its review of the responses to the RFQ has been completed and closed;
  - ix. Appoint evaluation committees to review Qualifications, make recommendations and seek the assistance of outside technical experts and consultants in Qualifications evaluation;
  - x. Disclose information contained in a Qualifications to the public as described herein;
  - xi. Waive deficiencies, informalities, and irregularities in Qualifications; accept, review, evaluate, and score a nonconforming Qualifications, or Qualifications that did not pass the pass/fail criteria, or seek clarifications or modifications to a Proposal;
  - xii. Not issue a notice to proceed after execution of the Contract;
  - xiii. Request or obtain additional information about any Qualifications from any source;
  - xiv. Disqualify any Respondent that violates the terms of the RFQ;
  - xv. Issue Addenda, including after the Qualifications Due Date, and including changes to conform the RFQ to applicable legal requirements; and
  - xvi. Exercise any other right reserved or afforded to the City under the RFQ and applicable law.
- b) **Disclaimer.** The RFQ does not commit the City to enter into a contract. The City assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFQ. All such costs shall be borne solely by each Respondent and Respondent team.

In no event shall the City be bound by, or liable for, any obligations with respect to the RFQ until such time (if at all) as the Contract, in form and substance is satisfactory to the City and has been authorized and executed by the City and, then, only to the extent set forth therein. In submitting Qualifications in response to the RFQ, Respondent is specifically acknowledging these disclaimers.

## V. PREPARING QUALIFICATIONS: REQUIRED INFORMATION

The Response must include all components listed below to be considered responsive. All Responses must be in a PDF format with 1" margins, single spaced text and must include the requested information to be considered responsive. Respondents will not have an opportunity to submit additional information after the Response deadline. The Response must include the following items with a total submittal length of five (5) pages in aggregate for items A and B below:

## A. Cover Letter

Respondent must submit a cover letter signed by an authorized representative of the entity committing Respondent to provide the Services as described in this RFQ in accordance with the terms and conditions of Order awarded pursuant to the RFQ process. The cover letter must include:

- a) **Firm and location.** Indicate the full, legal company name of Respondent, the address of its headquarters and the address of the office to which this project will be assigned.
- b) **Contact person.** Clearly identify the name, address and telephone number of the Respondent's contact person(s) for any and all communications pertaining to this RFQ.
- c) **Authorized submittal.** Include name, signature, title, address, and telephone number of the person authorized to submit and sign Respondent's Response.

## B. Corporate Overview and Experience

- a) **Corporate Overview.** Provide a concise overview of the Respondent, including a brief narrative of the firm's experience as it relates to this RFQ, and a description of Respondent's history of performance and knowledge of providing Natural Gas Supply Services, especially with respect to the Chicago market, municipal customers, and/or consumers with annual natural gas consumption comparable to the City's.
- b) **Experience.** Indicate how many years Respondent has been delivering the Services contemplated in this RFQ.
- c) **Approach.** Respondent must provide an executive summary which explains its understanding of the City's intent and objectives per the description of Services in Exhibit 1 and how their qualifications would achieve those objectives. The summary must discuss Respondent's plan for delivering the Services, approach to project management, strategies, tools and safeguards for delivering required Services, ongoing support, and any additional factors for the City's consideration.
- d) **Technical Qualifications.** Respondents must demonstrate that they are technically competent relative to the management of natural gas deliveries to customers behind the Peoples Gas system in Chicago.
- e) **Key Personnel Committed to this Account.** Respondent must submit resume(s) for key personnel who would be assigned to provide the Services.
- f) **References.** Provide customer references for three (3) customers. Municipal references are preferred. For each reference, provide the customer's name, project description, dates of contract service, and primary contact information (i.e., title, phone number, and email address). The City reserves the right to make independent inquiries of Respondent's clients not listed as references in the Response.

## C. Acceptance of City Terms

The City will require Qualified Respondents to accept the terms and conditions in substantially the form attached to this RFQ as Exhibit 7. In the case that a Respondent takes exception to any requirements of this RFQ, including its exhibits and forms, such exceptions must be provided as part of the Qualifications. Please provide the requirement, nature of the exception, and explanation. Exceptions will be considered in the evaluation of the Qualifications. Acceptance of Qualifications does not represent agreement as to any exceptions stated by a Respondent but does indicate the City's desire to reach mutually agreeable terms

through negotiation. The City will not accept any exceptions to any requirements set out in this RFP during contract negotiations that were not raised in the Qualifications.

In their Response, Respondents must submit a letter addressed to the Commissioner with a statement accepting the City's Terms and Conditions to be adhered to during the Contract Term.

A Respondent's failure to indicate acceptance of the Agreement in its Response may result in rejection of its Qualifications.

**D. Minority and Women Business Enterprises Commitment.**

Respondent must generally describe its plan and confirm its commitment to, at a minimum, meet the RFQ's MBE/WBE participation goals. The MBE participation goal is at least 26% of the total contract value be awarded to MBE firms, and the WBE participation goal is at least 6% of the total contract value be awarded to WBE firms. Respondents should carefully review Exhibit 6, Special Conditions Regarding MBE/WBE Commitment and MBE/WBE Compliance Plan.

*Note: Though not required as part of the Qualifications submission, it will be mandatory for the selected Respondent to provide a detailed MBE/WBE Compliance plan that must be approved by the City prior to the City awarding an RFQ contract pursuant to this RFQ/RFP. Failure to achieve a City approved fully defined MBE/ WBE Compliance plan in a timely manner could be grounds for termination of the Agreement.*

**E. Financial Statements and Business Licenses**

Respondent must provide a copy of its audited financial statements for the last 3 years. Respondents that are comprised of more than one entity must include financial statements for each entity. A complete set of financial statements is required to be considered as a Qualified Respondent. The City **will not** accept a web link for the financial statement's requirement.

Respondents shall provide required financial statements in sufficient detail for the City to assess Respondent's financial condition as part of its Qualifications evaluation. The City reserves the right to accept or reject any financial documentation other than the financial statements requested by this section.

If Respondent is unable to provide audited financial statements, state the reasons in your Qualifications response and provide financial documentation in enough detail to enable the City to assess the financial condition of your company.

Possible alternate documentation would be un-audited financial statements from those Respondents not required to have their financial statements audited. At a minimum, the statements must include the balance sheets and income statements (or equivalent) for the last three years. Assets/liabilities and income/expenses must be presented in adequate detail for the City to assess the financial condition of the Respondent.

Respondent must provide copies of appropriate licenses or certifications required of any individual or entity performing the Services described in this RFQ in the City of Chicago, County of Cook and State of Illinois, for itself, its partners, and its subcontractors, including evidence that Respondent is authorized by the Illinois Secretary of State to do business in the State of Illinois, if required by law to have such authorization. See the State of Illinois, Secretary of State website for additional information: <http://www.cyberdriveillinois.com>.



Additionally, if required by law, Respondents are required to have an Illinois Business License or Professional Certification. Visit the State of Illinois' Division of Professional Regulation for information regarding professional certification and licensing: <http://www.idfpr.com/DPR/>.

**F. Economic Disclosure Statement and Affidavit and Attachment A: Online EDS Acknowledgement.**

Respondent shall complete an Economic Disclosure Statement and Affidavit ("EDS") and Attachment A: Online EDS Acknowledgement. See Online City of Chicago EDS Instructions and Attachment A: Online EDS Acknowledgement in Exhibit 4 of this RFQ.

**G. Legal Actions**

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

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

The City reserves the right to request similar legal action information from Respondent's team members during the evaluation process.

**H. Insurance**

Respondents are not required to submit evidence of insurance with the Qualifications but must submit evidence of insurability indicating that if chosen as the Selected Respondent, they will provide evidence of insurance in the amounts specified in Exhibit 3. If Selected Respondent is a joint venture or limited liability company the evidence of insurability and evidence of insurance, must be in the name of the joint venture or limited liability company.

**I. Disclosure of Conflicts of Interest**

The City expects that the Respondent will not have any conflicts of interest (including, but not limited to, any conflicts based on Respondent's participation in other City contracts). Therefore, Respondent should include in its Qualifications a description of any actual or potential conflicts of interest.

## VI. EVALUATION OF QUALIFICATIONS

An Evaluation Committee, which will include representatives from AIS and may include representatives of other departments of the City ("Evaluation Committee" or "EC") will review and evaluate the Qualifications, as described below.

In evaluating Qualifications, the EC will first consider the completeness and responsiveness of the Respondent's Qualifications submission. The Qualifications evaluation process is organized into two phases:

- Phase I - Preliminary Qualifications Assessment
- Phase II - Qualifications Evaluation

### **Phase I - Preliminary Qualifications Assessment**

Phase I will involve an assessment of the Respondent's compliance with and adherence to all submittal requirements herein. Qualification's responses which are incomplete and missing key components necessary to fully evaluate the Qualifications may, at the discretion of the EC, be rejected from further consideration due to "non-responsiveness" and rated Non-Responsive. Qualifications providing responses to all sections will be eligible for detailed analysis in Phase II, Qualifications Evaluation.

### **Phase II - Qualifications Evaluation**

In Phase II, the EC will evaluate the extent to which a Respondent's Qualifications meets the requirements set forth in the RFQ, including all elements of the Scope of Services expected to be delivered by the Contractor described in Exhibit 1 herein. Phase II will include a detailed analysis of the Respondent's qualifications and experience.

As part of the evaluation process, the EC will review the information required by RFQ Section V, for each Qualifications submission received. The EC may also review other information gained by checking references and by investigating the Respondent's financial condition.

Respondent's Qualifications will be evaluated on a pass / fail basis per the following criteria:

- a) Qualifications and Experience
- b) Delivery and Supply Plan
- c) All information required in Section V of this RFQ has been adequately provided, including acceptance of the City's terms and conditions and EDS completion;
- d) Respondent is in good financial standing;
- e) Proven ability to provide the Services as outlined in Exhibit 1 to this RFQ.
- f) The City will give preference to responses that demonstrate how the sourcing of natural gas does not cause harm to environmentally sensitive areas or infringe on indigenous property rights by building new pipelines on indigenous land.

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

The City reserves the right to enlist independent consulting services to assist with the evaluation of all or any portion of the Qualifications responses as it deems necessary.

**VII. QUALIFIED RESPONDENT NOTIFICATION**

Following EC Evaluations, the City will notify in writing all Respondents that have been deemed Qualified as well as Respondents deemed not Qualified. The written notification to Qualified Respondents will include an invitation from the City to execute the City Terms substantially in the form attached hereto as Addendum.

All Qualified Respondents that execute the City Terms will be considered Qualified Contractors eligible to participate in the City's subsequent RFP for Natural Gas Supply Services.

**EXHIBIT 1 SCOPE OF SERVICES**

## I. SUMMARY OVERVIEW

The purpose and objective of this RFQ is to identify a pool of Qualified Respondents who will then be invited to submit Pricing Forms in response to the City's RFP. In the RFP, the City's goal is to select a single Contractor from whom the City will procure natural gas supply for exclusive use by the City. The Contractor should, at a minimum, perform the following functions:

### 1. Provide Firm, Full Requirements Gas Supply

Contractor must provide firm, full requirements gas supply to the Chicago citygate for receipt by Peoples Gas for the City's accounts in sufficient quantities to meet the requirements of the City's gas utility accounts listed in Exhibit 3 of this RFQ.

### 2. Gas Storage Management and Reporting

The City intends to allow the Contractor access to the City's Peoples Gas storage capability for use by the Contractor in balancing supply to meet the City's gas supply needs on a day-by-day basis through the term. In exchange, the City expects to receive a discounted price for service and to be insulated from any balancing charges assessed by Peoples Gas, including critical day penalties, through the term. Proposers should take this into account when submitting their Pricing Form. Proposers should assume that for the start of the term, the City's storage balance will be zero.

### 3. Invoice Delivery

The Contractor must be willing and able to submit invoices to the City for the sale of gas supply in compliance with the provisions of the Agreement and to deliver such invoices to email address(es) specified by the City.

### 4. Supplier Consolidated Billing

The City's strong preference is that the Contractor will provide Supplier Consolidated Billing to the City. The Contractor will receive billing records from Peoples Gas for the City's accounts, include such charges in its invoices to the City without mark-up, and pay Peoples Gas for such charges on the City's behalf. Qualified Respondents should state the cost, if any, of providing Supplier Consolidated Service in their Pricing Form. If the Qualified Respondent determines it is not able to offer this service to the City or cannot offer the service at a price the City deems reasonable, this factor will be considered in the City's evaluation.

### 5. Pricing

The Contractor shall provide the City with natural gas to be purchased at the first of the month NYMEX price plus fixed basis price that will be fixed for the term of the Agreement. The Contractor shall provide for this fixed basis price in its Pricing Form.

Qualified Respondents must complete the Pricing Form. Failure to complete the Pricing Form may be cause for rejection of the submission.

The Pricing Form allows Qualified Respondents to specify their price offer for a Fixed Basis product and for a Fixed Price product, each with three (3) swing options. Qualified Respondents are not required to provide prices for both pricing products and all swing options but run the risk of not being selected if the City selects the pricing product or swing option for which the Qualified Respondent did not provide a price.

The cost of Natural Gas utility distribution charges assessed by Peoples Gas should not be included in Qualified Respondent's Pricing Form. Gas utility pooling costs directly related to serving the City's accounts may be passed through to the City at cost.

Under the Fixed Basis product, if selected by the City, throughout the term of the Agreement the Contractor shall provide the City with the ability to establish a fixed NYMEX price for some or all of its monthly gas purchase

quantities, for some or all months in the contract term. Qualified Respondents should provide a description of its procedure for performing such transactions as part of its Comprehensive Plan.

**6. Transition Plan**

The City is currently obtaining natural gas supply through a third-party supplier, Constellation NewEnergy. The Contractor shall be responsible for ensuring a seamless transition of natural gas supply service upon the effective date of this contract.

**7. Online Access**

For Contractors with this ability, the City is interested in obtaining access to a password protected website where it can review reports showing its historical gas usage and cost, historical invoices, and/or other reports or information pertinent to the City's purchase of natural gas supply from Contractor. A sample of reports available online, if any, may be submitted as part of Qualified Respondent's Comprehensive Plan.

**EXHIBIT 2 NATURAL GAS CONTRACT QUANTITIES (DTH PER MONTH)**

Refer to Exhibit 4, Draft Transaction Confirmation

**EXHIBIT 3 GAS ACCOUNTS WITH ASSOCIATED STORAGE BACKUP**

Please send a request to [Diana.Ballesteros@cityofchicago.org](mailto:Diana.Ballesteros@cityofchicago.org) to receive an Excel file of the City's electricity accounts



**EXHIBIT 4 CITY OF CHICAGO NAESB COVER PAGE, SPECIAL PROVISIONS, AND DRAFT  
TRANSACTION CONFIRMATION**

# Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: \_\_\_\_\_

The parties to this Base Contract are the following:

PARTY A [INSERT COUNTERPARTY LEGAL ENTITY NAME]	PARTY NAME	PARTY B [INSERT COUNTERPARTY LEGAL ENTITY NAME]
	<i>ADDRESS</i>	
WWW: _____	<i>BUSINESS WEBSITE</i>	WWW: _____
	<i>CONTRACT NUMBER</i>	
	<i>D-U-N-S® NUMBER</i>	
<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:	<i>TAX ID NUMBERS</i>	<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
	<i>JURISDICTION OF ORGANIZATION</i>	
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<i>COMPANY TYPE</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	<i>GUARANTOR (IF APPLICABLE)</i>	
Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Selected	<i>PARTY CFTC CLASSIFICATION</i>	Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Selected
<b>CONTACT INFORMATION</b>		
ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____	▪ <i>COMMERCIAL</i>	ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____	▪ <i>SCHEDULING</i>	ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____	▪ <i>CONTRACT AND LEGAL NOTICES</i>	ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____	▪ <i>CREDIT</i>	ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____	▪ <i>TRANSACTION CONFIRMATIONS</i>	ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
<b>ACCOUNTING INFORMATION</b>		
ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____	▪ <i>INVOICES</i> ▪ <i>PAYMENTS</i> ▪ <i>SETTLEMENTS</i>	ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	<i>WIRE TRANSFER NUMBERS (IF APPLICABLE)</i>	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	<i>ACH NUMBERS (IF APPLICABLE)</i>	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
ATTN: _____ ADDRESS: _____	<i>CHECKS (IF APPLICABLE)</i>	ATTN: _____ ADDRESS: _____

# Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<b>Section 1.2</b> Transaction Procedure <input type="checkbox"/> Oral (default) OR <input checked="" type="checkbox"/> Written	<b>Section 10.2</b> Additional Events of Default <input type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default Specified Transactions: _____ _____
<b>Section 2.7</b> Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt	
<b>Section 2.8</b> Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer _____	
<b>Section 3.2</b> Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) <input type="checkbox"/> Argus Natural Gas Americas VWA _____	<b>Section 10.3.2</b> Other Agreement Setoffs <input type="checkbox"/> Other Agreement Setoffs Apply (default) <input type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input checked="" type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> Payment Date <input checked="" type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> Choice Of Law <u>State of Illinois</u>
<b>Section 7.2</b> Method of Payment <input type="checkbox"/> Wire transfer (default) <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> Confidentiality <input type="checkbox"/> Confidentiality applies (default) OR <input checked="" type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: <span style="background-color: yellow; display: inline-block; width: 20px; height: 10px;"></span>	
<input type="checkbox"/> <b>Addendum(s):</b> _____	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

<b>[INSERT COUNTERPARTY LEGAL ENTITY NAME]</b>	<i>PARTY NAME</i>	<b>[INSERT COUNTERPARTY LEGAL ENTITY NAME]</b>
By: _____	<i>SIGNATURE</i>	By: _____
[Insert Name]	<i>PRINTED NAME</i>	[Insert Name]
[Insert Title]	<i>TITLE</i>	[Insert Title]

**SPECIAL PROVISIONS TO THE  
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS ( )**

**Between \_\_\_\_\_ and the City of Chicago**

**DATED \_\_\_\_\_, 2021**

The above-referenced Base Contract for Sale and Purchase of Natural Gas (the "Base Contract") between \_\_\_\_\_ and the City of Chicago is hereby amended and revised, effective as of the date of the Base Contract. Unless specifically agreed otherwise in a Transaction Confirmation, the Base Contract, as modified by these Special Provisions, shall apply to all transactions for the purchase and sale of Gas between the parties. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Base Contract.

The Special Provisions contained herein take precedence over any general terms and conditions contained in the Base Contract. If there is a conflict between the Special Provisions and the general terms and conditions contained in the Base Contract, the terms of these Special Provisions shall govern.

Any definitions used in the Base Contract, unless otherwise defined in these Special Provisions, shall have the same meaning in these Special Provisions. Any reference to a Section in these Special Provisions refers to the same Section of the General Terms and Conditions to the Base Contract.

**Section 1. Purpose and Procedures**

**Section 1.3.** The last sentence of Section 1.3 is amended to read as follows:

"In the event of a conflict among the terms of (i) the Base Contract, including these Special Provisions, (ii) the General Terms and Conditions from NAESB Standard 6.3.1, (iii) a binding Transaction Confirmation pursuant to Section 1.2, and (iv) the oral agreement of the parties which is evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, the terms of the documents shall govern in the priority listed in this sentence."

**Section 2. Definition**

Section 2.9 is deleted in its entirety and the following is substituted in its place:

2.9 "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, inclusive of the Special Provisions (attached to the Base Contract as Schedule B), (ii) any and all binding Transaction Confirmations, and (iii) the terms and conditions of the Request for Qualification issued by the Buyer, No. 104757, including any addenda thereto."

### Section 3. Performance Obligation

**Section 3.4.** Section 3.4 is hereby deleted.

### Section 6. Taxes

**Section 6.** The label "6.1." is hereby added before the first occurrence of the words "Seller shall pay " in Section 6 and a new Section 6.2 is hereby added reading as follows: "Notwithstanding the foregoing, Seller acknowledges that Buyer is exempt and not subject to certain Taxes under Illinois law. Materials purchased by the Buyer are not subject to the Federal Excise Tax; the City's Tax Exemption Certificate number is 36-6005820. Materials purchased by the Buyer are not subject to the State of Illinois Sales Tax; the Buyer's Tax Exemption Certificate number is E9998- I 874-07. The Illinois Retailers Occupation Tax, Use Tax, and Municipal Retailers' Occupational Tax do not apply to materials or services purchased by the Buyer. Seller shall not attempt to charge or otherwise invoice the Buyer for any such Taxes. In the event of a change in tax exemption status, the party entitled to an exemption from any taxes or related charges shall furnish the other party all reasonably requested documentation evidencing the change in status."

### Section 7. Billing and Payment

Section 7.1 is deleted in its entirety and the following substituted in its place:

7.1 "Seller shall provide Buyer with a written invoice setting forth the quantity of Gas which was scheduled under the Contract and delivered for the preceding Month, the Contract Price for such Gas, and any quantity or payment adjustments (or both) to scheduled quantities to reflect the actual quantities delivered for any prior Months, detailing such adjustments by quantity adjusted and the total amount due. The invoice shall be sufficiently detailed to support the amount billed and shall include such other information as reasonably requested by Buyer. At this time, Seller shall also provide account level reconciliation of supplier and Transporter costs in the form of a separate invoice, for payment. The Transporter invoice shall be sufficiently detailed to support the amount billed and shall include such other information as reasonably requested by Buyer."

"Seller shall supply all invoices electronically to Buyer via email to the following address: \_\_\_\_\_

Section 7.2 is deleted in its entirety and the following substituted in its place:

7.2 "Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, on or before the later of the Payment Date or sixty (60) Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2."

**Section 7.5.** The following language is hereby inserted after "(i).“ replacing the previous language for "(i.)“:

"the interest rate specified in the Illinois Local Government Prompt Payment Act a copy of which is available at:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=725&ChapAct=50%26nbsp%3BILCS%26nbsp%>

**Section 8. Title, Warranty, and Indemnity**

**Section 8.1** In the second line, insert the word “arising” between “Gas” and “prior”. In the third line, after the word “Gas”, insert the words “arising upon or”.

**Section 9. Notices**

**Section 9.3.** In the first line, replace the word “given” with the word “effective”.

**Section 9.5.** A new Section 9.5 is added as follows:

9.5. The Agreement number must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as follows:

Supplier: _____  Notices, Correspondence and Parcel  Deliveries,  _____  <b>Fax Number:</b>  <b>E-mail:</b>	Buyer: City of Chicago  _____  Attn: _____  <b>E-mail:</b> _____
Payments  (as indicated on invoice)	

**Section 12. Term**

The first sentence is hereby deleted and replaced with the following:

“This Contract shall remain in effect for a period of thirty-six (36) months from May 1, 2022. The Buyer shall have the option to extend this Agreement two times for additional periods of up to one year each or one time for an additional period of up to two years. At any time during the then-current term of this Agreement, Buyer may request Contractor to offer pricing for an additional one or two years, at the Buyer’s sole discretion, to extend the term of this agreement for such time following the end of the then-current term. Buyer may update or revise the Listed Facilities for the requested term extension as Buyer deems appropriate at its sole discretion. The Contractor agrees to make such an offer to Buyer at its request setting forth the price or prices at which Contractor would continue to provide service for the requested periods. The Contractor’s offer to extend shall be made on the Pricing Forms to the RFP, as applicable, in executable form, and shall be subject to the terms and conditions set forth in the RFP and in this Agreement. By requesting an offer to extend the term of the Agreement, Buyer does not commit to extend the term of the Agreement, and Buyer may

accept or reject the Contractor's offer in its sole discretion. If Buyer accepts such an offer, then it will execute and deliver the applicable related Pricing Form, which shall then become a part of this Agreement, and this Agreement shall be extended for the term set forth in the applicable Pricing Form."

## Section 15. Miscellaneous

Section 15.1 The second sentence in the section is replaced with the following:

15.1 "No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed."

Section 15.11 is deleted in its entirety and the following substituted in its place:

15.11 "Each Party shall retain and have all rights and remedies available at law or equity to resolve any dispute arising under or related to this Contract."

Add to the following as Section 15.13:

15.13 "The Seller acknowledges and agrees to comply with the terms and specifications set forth in the Buyer's Request for Proposals, as the same is incorporated herein by reference."

Section 15.15 is added to the Contract as follows

15.15 "Publicity. It is the policy of Buyer that no endorsement by Buyer be stated or implied by Seller for any of Seller's products or services. All materials utilizing the name or trademarks of Buyer in advertising, marketing, and sales promotion materials must be submitted to Buyer's Department of Assets, Information, and Services for approval, such approval not to be unreasonably withheld, at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Add to the following as Section 15.17:

15.17 "The Seller acknowledges and agrees to comply with the City's Standard Terms and Conditions incorporated here by reference and attached hereto as Addendum 1 (City Standard Terms and Conditions) at all times during the Term."

**DRAFT TRANSACTION CONFIRMATION**  
**FOR IMMEDIATE DELIVERY**

	Date: _____, _____
--	--------------------

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated \_\_\_\_\_ and subject to the terms of Buyer's RFP \_\_\_\_\_ Request for Qualifications ("the RFP") and the Best and Final (BAFO) Proposal dated \_\_\_\_\_ submitted by Seller pursuant to the RFP ("Price Proposal") which is attached hereto. The terms of this Transaction Confirmation are binding.

<b>SELLER:</b>	<b>BUYER:</b>
_____	_____
_____	_____
_____	_____
Attn: _____	Attn: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____
Instant Message (IM) and Carrier: _____	Instant Message (IM) and Carrier: _____
Base Contract No. _____	Base Contract No. _____
Transporter: _____	Transporter: _____
Transporter Contract Number: _____	Transporter Contract Number: _____

Contract Price: \$ \_\_\_\_\_/MMBtu for the Fixed Basis Product \_\_\_ or Fixed Price Product \_\_, Option A \_\_\_ or Option B \_\_\_ or Option C \_\_\_ as described in the Price Proposal. ***(The City will remove the options that are not selected prior to execution).***

Delivery Period: Begin: May 1, 2022 End: April 30, 20\_\_

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**Performance Obligation and Contract Quantity:** Firm, Full Requirements as described in the RFP.

**Contract Volumes: (CofC to remove last 12 mo if CofC selects 24 mo term)**

	PG		PG		PG
	<u>MMBtu</u>		<u>MMBtu</u>		<u>MMBtu</u>
May-22	224,819	May-23	224,819	May-24	224,819
Jun-22	180,027	Jun-23	180,027	Jun-24	180,027
Jul-22	168,801	Jul-23	168,801	Jul-24	168,801
Aug-22	157,491	Aug-23	157,491	Aug-24	157,491
Sep-22	158,853	Sep-23	158,853	Sep-24	158,853
Oct-22	262,345	Oct-23	262,345	Oct-24	262,345
Nov-22	378,758	Nov-23	378,758	Nov-24	378,758
Dec-22	424,747	Dec-23	424,747	Dec-24	424,747
Jan-23	464,251	Jan-24	464,251	Jan-25	464,251
Feb-23	426,180	Feb-24	426,180	Feb-25	426,180
Mar-23	376,794	Mar-24	376,794	Mar-25	376,794
Apr-23	280,821	Apr-24	280,821	Apr-25	280,821

**Delivery Point(s):** Supplier's Pool behind Peoples Gas (PG) Citygate

**Special Conditions:**

Fixed Basis Product. Provide the Price Adder to the Monthly NYMEX Final Settlement Price for all accounts behind Peoples' Gas. The Price Adder should be inclusive of transportation/basis, supplier margin, fuel, balancing, and discount for storage.

OR

Fixed Price Product – All-In Commodity and Basis. Provide one fixed price for the accounts behind Peoples' Gas. The price should be inclusive of commodity, transportation/basis, supplier margin, fuel, balancing, and discount for storage.

***(CofC will remove the paragraph above that is not selected prior to execution).***

For Option A and B under both the Fixed Basis Product and the Fixed Price Product, gas volumes consumed in excess of the monthly contract volume plus the swing percentage will be priced at the Gas Daily Daily Average (GDDA) Chicago Citygate price plus \$0.\_\_\_\_ ("Incremental Price") and when gas volumes consumed are less than the monthly contract volume minus the swing percentage, the difference will be priced at the Gas Daily Daily Average (GDDA) Chicago Citygate price minus \$0.\_\_\_\_ ("Cashout Price"). The comparison between volumes consumed and contract volumes will be performed for each gas utility separately.

OR

For Option A and B under both the Fixed Basis Product and the Fixed Price Product, gas volumes consumed in excess of the monthly contract volume plus the swing percentage will be priced at the NGI Chicago Citygate Fixed+Basis average price for the month following delivery plus \$0.\_\_\_\_ (“Incremental Price”) and when gas volumes consumed are less than the monthly contract volume minus the swing percentage, the difference will be priced at the NGI Chicago Citygate Fixed+Basis average price for the month following delivery minus \$0.\_\_\_\_ (“Cashout Price”). The comparison between volumes consumed and contract volumes will be performed for each gas utility separately.

***(The City will remove the paragraph above that is not selected prior to execution).***

Allocation: Seller will allocate the Contract Quantity listed herein among the Buyer's separate facilities or meters.

Buyer agrees to maintain the same Days of Backup listed in Appendix C of the RFP through the Delivery Period.

Supplier will not pass through any balancing charges or OFO/critical day penalties from Peoples Gas.

Seller: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Buyer: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**EXHIBIT 5 SPECIAL CONDITIONS REGARDING MBE/WBE COMMITMENT AND MBE/WBE  
COMPLIANCE PLAN**

## SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR COMMODITIES OR SERVICES

### 1.1. Policy and Terms

It is the policy of the City of Chicago that Local Businesses certified as Minority Owned Business Enterprises (MBE) and Women Owned Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago 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, will have full and fair opportunities to participate fully in the performance of this contract. Therefore, the Contractor will not discriminate against any person or business on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income and will take affirmative action to ensure that women and minority businesses will have the maximum opportunity to compete for and perform subcontracts for supplies or services.

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 26% of the annual dollar value of all non-construction contracts to certified MBEs and 6% of the annual dollar value of all non-construction contracts to certified WBEs.

Accordingly, the Contractor commits to make Good Faith Efforts to expend at least the following percentages of the total contract price, if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
26%	6%

(See Form "Bidders Commitment to Utilize MBE and WBE Firms on No Stated Goals Contract" for Contract Specific Goals in the case of a contract subject to a bid preference pursuant to MCC 2-92-525.)

This commitment is met by the Contractor's status as a MBE or WBE, by a member of the Contractor having a status as a MBE or WBE, or by a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE or WBE participation in such joint venture), or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by any combination of the foregoing.

**Note:** MBE/WBE participation goals are separate, and those businesses certified with the City of Chicago as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE, but not both to demonstrate compliance with the Contract Specific Goals.

The Contractor also may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector contracts.

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.

## 1.2. Definitions

**"Area of Specialty"** means the description of an MBE or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE/WBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory (defined below). Credit toward this Contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

**NOTICE:** *The City of Chicago does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.*

**"Bid"** means a bid, proposal, or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification of task order request (issued in accordance with the Master Consulting Agreement) that is issued by the City.

**"Bidder"** means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

**"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.

**"Contract Specific Goals"** means the subcontracting goals for MBE and WBE participation established for a particular contract. In the case of a contract subject to the bid incentive set forth in MCC 2-92-525, "Contract Specific Goals" means the utilization percentage for MBEs or WBEs to which contractor committed with its bid.

**"Contractor"** means any person or business entity that has entered into a contract with the City as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.

**"Direct Participation"** the value of payments made to MBE or WBE firms for work that is performed in their Area of Specialty directly related to the performance of the subject matter of the Contract will count as Direct Participation toward the Contract Specific Goals.

**"Directory"** means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs and WBEs and includes both the date of their last certification and the area of specialty in

which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE, and WBE firms.

**"Good Faith Efforts"** means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that the CPO or his or her designee has determined, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

**"Indirect Participation"** refers to the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty related to other aspects of the Contractor's business. (Note: no dollar of such indirect MBE or WBE participation shall be considered in a Good Faith Efforts determination more than once against a contractor's MBE or WBE commitment with respect to all government contracts held by that contractor.)

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

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

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

**"Municipal Code of Chicago" or "MCC"** means the Municipal Code of the City of Chicago.

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

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

### 1.3. Joint Ventures

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

- a. The joint venture may be eligible for credit towards the Contract Specific Goals only if:
  - i. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
  - ii. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
  - iii. Each joint venture partner executes the bid to the City; and
  - iv. 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 i, ii, and iii above in this Paragraph a.
- b. The Chief Procurement Officer shall evaluate the Schedule B submitted on behalf of the proposed joint venture to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

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

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

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

#### c. **Schedule B: MBE/WBE Affidavit of Joint Venture**

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit a Schedule B and must clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage.

The proposed joint venture agreement must include specific details related to:

- i. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
- ii. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
- iii. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and

- iv. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

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

#### 1.4. Counting MBE/WBE Participation Toward the Contract Specific Goals

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

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm that is certified as both a MBE and a WBE may only be listed on the bidder's compliance plan under one of the categories, but not both. Except as provided in MCC 2-92-525(b)(2), only Payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.

- a. Only expenditures to firms that perform a Commercially Useful Function as defined above may count toward the Contract Specific Goals.
  - i. 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.
  - ii. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non-MBE and non WBE firms perform the same function in the marketplace to make a determination.
  - iii. Indications that a subcontractor is not performing a commercially useful function include, but are not limited to, labor shifting and equipment sharing or leasing arrangements with the prime contractor or a first-tier subcontractor.
- b. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its Area of Specialty in which it is certified counts toward the Contract Specific Goals, except as provided in MCC 2-92-525(b)(2).
- c. For maintenance, installation, repairs or inspection, or professional services, if the MBE or WBE performs the work itself: 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies and materials 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 (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or its affiliate). 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm count toward the Contract Specific Goals.



- d. If the MBE or WBE is a manufacturer: 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- e. If the MBE or WBE is a distributor or supplier: 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- f. If the MBE or WBE is a broker:
  - i. Zero percent (0%) of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  - ii. As defined above, Brokers provide no commercially useful function.
- g. If the MBE or WBE is a member of the joint venture contractor/bidder:
  - i. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals; or
  - ii. If employees of this distinct joint venture entity perform the work, then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in the Schedule B.
  - iii. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs.
- h. If the MBE or WBE subcontracts out any of its work:
  - i. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  - ii. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm count toward the Contract Specific Goals (except as allowed by (c) above).
  - iii. 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 and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for 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.
  - iv. 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.
  - v. 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.

### **1.5. Regulations Governing Reductions to or Waiver of MBE/WBE Goals**

The following Regulations set forth the standards to be used in determining whether or not a reduction or waiver of the MBE/WBE commitment goals of a particular contract is appropriate. If a bidder determines that it is unable to meet the MBE and/or WBE Contract-Specific Goals on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the MBE/WBE percentages submitted on the bidder's letterhead and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

A bidder will be considered responsive to the terms and conditions of these Regulations if, at the time of bid, it submits a waiver request and all supporting documentation that adequately addresses the conditions for waiver of MBE/WBE goals, including proof of notification to assist agencies except:

- Bidders responding to Request for Qualifications (RFPs) who have been identified as a short listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and
- Bidders responding to Request for Information and or Qualifications (RFI/RFQs) deemed by the Chief Procurement Officer or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations.

Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his or her discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder; or re-advertising the bid/proposal. All bidders must submit all required documents at the time of bid opening to expedite the contract award.

#### **1.5.1. Direct Participation**

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

- a. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct work identified or related to the advertised bid/proposal. Documentation must include but is not necessarily limited to:
  1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
  2. A listing of all MBE/WBE firms contacted that includes:
    - Name, address, telephone number and email of MBE/WBE firms solicited;
    - Date and time of contact;
    - Method of contact (written, telephone, transmittal of facsimile documents, email, etc.)
  3. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
    - Project identification and location;
    - Classification/commodity of work items for which quotations were sought;
    - Date, item and location for acceptance of subcontractor bid Qualifications;
    - Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
    - Affirmation that Good Faith Efforts have been demonstrated by:

- choosing subcontracting opportunities likely to achieve MBE/WBE goals; and
- not imposing any limiting conditions which were not mandatory for all subcontractors; and
- providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date; and
- documented efforts or actual commitment to the indirect participation of MBE/WBE firms.

**OR**

b. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:

1. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).

- A listing of all potential subcontractors contacted for a quotation on that work item;
- Prices quoted for the subcontract in question by all such potential subcontractors for that work item.

2. Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE Qualifications are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:

- The City's estimate for the work under a specific subcontract;
- The bidder's own estimate for the work under the subcontract
- An average of the bona fide prices quoted for the subcontract;
- Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

### **1.5.2 Assist Agency Participation in Waiver/Reduction Requests**

Every waiver and/or reduction request must include evidence that the bidder has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community. This notice must be given at least five (5) business days in advance of the initial bid due date.

The notice requirement of this Section will be satisfied if a bidder contacts at least one of the associations on Attachment A to these Regulations when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B to these Regulations provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required to be submitted with the bid for any bid/proposal to be deemed responsive. If deemed appropriate, the Contract Compliance Officer may contact the assist agency for verification of notification.

### **1.5.3. Impracticability**

If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.

The requirements set forth in these Regulations (this subsection 1.5 "Regulations Governing Reduction to or Waiver of MBE/WBE Goals") shall not apply where the Chief Procurement Officer determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices or standards not previously known by the Chief Procurement Officer, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

#### **1.6. Procedure to Determine Bid Compliance**

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

- An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals; and/or
- A request for reduction or waiver of the Contract Specific Goals in accordance with Section 2-92-450 of the MCC.

In the case of a bid utilizing the "Bid Incentive to Encourage MBE and WBE Utilization" pursuant to MCC 2-92-525(b)(2), failure to submit an MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goal to which the bidder has committed will not result in rejection of the bid, but the bidder may be found ineligible for the bid incentive.

Except as provided in MCC 2-92-525(b)(2), only compliance plans utilizing MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements will be counted toward the Contract Specific Goals.

The following Schedules and described documents constitute the bidder's MBE/WBE proposal, and must be submitted in accordance with the guidelines stated:

#### **(1) Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant.**

The bidder must submit the appropriate Schedule C-1 with the bid for each MBE and WBE included on the Schedule D-1. Suppliers must submit the Schedule C-1 for Suppliers, first tier subcontractors must submit a Schedule C-1 for Subcontractors to the Prime Contractor and second or lower tier

subcontractors must submit a Schedule C-1 for second tier Subcontractors. The City encourages subcontractors to utilize the electronic fillable format Schedule C-1, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Each Schedule C-1 must be executed by each MBE and WBE and 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-1 has been submitted with the bid, an executed original Schedule C-1 must be submitted by the bidder for each MBE and WBE included on the Schedule D-1 within five business days after the date of the bid opening.

Failure to submit a completed Schedule C-1 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 MBE/WBE firm's current Letter of Certification from the City of Chicago or Cook County Illinois, must be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago and Cook County include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-1, must conform to their stated Area of Specialty. Letters of Certification for firms that the City or Cook County has found ineligible or has decertified will not be accepted.

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

If the bidder's MBE/WBE proposal includes the participation of a MBE/WBE as joint venture on any tier (either as the bidder or as a subcontractor), the bidder must provide a copy of a Schedule B along with all other requirements listed in Section 1.3, above. In order to demonstrate the MBE/WBE 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 MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract.

### **(4) Schedule D-1: Required Schedules Regarding MBE/WBE Utilization**

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm. The City encourages bidders to utilize the electronic fillable format Schedule D-1, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section 1.5 "Regulations Governing Reductions to or Waiver of MBE/WBE Goals" herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE 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-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the opening, the bidder may submit a revised Schedule D-1 (executed and

notarized to conform with the Schedules C-1). 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 and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

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

#### **(5) Application for Approval of Mentor Protégé Agreement**

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.

### **1.7. Reporting Requirements During the Term of the Contract**

- a. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.
- b. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. 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 subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- c. Once the prime Contractor has reported payments made to each subcontractor, including zero-dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
- d. All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.  
Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://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 and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.

- f. The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after project closeout. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

## **1.8. Changes to Compliance Plan**

### **1.8.1. Permissible Basis for Change Required**

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

Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:

- a. Unavailability after receipt of reasonable notice to proceed;
- b. Failure of performance;
- c. Financial incapacity;
- d. Refusal by the subcontractor to honor the bid or proposal price or scope;
- e. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- f. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- g. The subcontractor's withdrawal of its bid or proposal; or
- h. De-certification of the subcontractor as a MBE or WBE (graduation from the MBE/WBE program does not constitute de-certification).
- i. Termination of a Mentor Protégé Agreement.

### **1.8.2. Procedure for Requesting Approval**

If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance

Plan, the procedure will be as follows:

- a. The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
- b. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.
- c. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific

Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of Good Faith Efforts, must meet the requirements in section 5. If the MBE or WBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.

- d. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
- e. A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

### **1.9. Non-Compliance and Damages**

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, except in the case of a contract where a bid incentive under MCC 2-92-525 was taken into consideration in the award; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.

Payments due to the contractor may be withheld until corrective action is taken.

Pursuant to MCC 2-92-445 or 2-92-740, as applicable, remedies or sanctions may include a penalty in 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, and disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

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 MCC 2-92-445 or 2-92-740, within 15 business days of the final determination.

In the case of a in the case of a contract for which a bid incentive under MCC 2-92-525 was taken into consideration in the award, any contractor that has failed to retain the percentage of MBE or WBE subcontractor committed to in order for the bid incentive to be allocated will be fined an amount equal to three times the amount of the bid incentive allocated, unless the contractor can demonstrate that due to circumstances beyond the contractor's control, the contractor for good cause was unable to retain the percentage of MBE or WBE subcontractors throughout the duration of the contract period.



### 1.10. Arbitration

- a. In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide that any disputes between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE/WBE.
- b. An MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitral process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
- c. All arbitration fees are to be paid pro rata by the parties, however, that the arbitrator is authorized to award reasonable expenses, including attorney and arbitrator fees, as damages to a prevailing MBE/WBE.
- d. The MBE/WBE must send the City a copy of the Demand for Arbitration within ten (10) calendar days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

### 1.11. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law.

### 1.12. Attachments and Schedules

The following attachments and schedules follow, they may also be downloaded from the Internet at:

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

- Attachment A: Assist Agencies
- Attachment B: Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals
- Schedule B: Affidavit of Joint Venture (MBE/WBE)
- Schedule C-1: Letter of Intent From MBE/WBE To Perform as Subcontractor, Supplier and/or Consultant
- Schedule D-1: Compliance Plan Regarding MBE/WBE Utilization

**Attachment A –Assist Agency List (Rev. Apr. 2018)**

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.

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

**51<sup>st</sup> Street Business Association \***

220 E. 51<sup>st</sup> Street  
Chicago, IL 60615  
Phone: 773-285-3401  
Fax: 773-285-3407  
Email:

[the51ststreetbusinessassociation@yahoo.com](mailto:the51ststreetbusinessassociation@yahoo.com)

Web: [www.51stStreetChicago.com](http://www.51stStreetChicago.com)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**African American Contractors Association -  
AACA**

P.O. Box #19670  
Chicago, IL 60619  
Phone: 312-915-5960

Email: [aacanatlassoc@gmail.com](mailto:aacanatlassoc@gmail.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Angel of God Resource Center, Inc.  
14527 S. Halsted**

Chicago, IL 60827  
Phone: 708-392-9323  
Fax: 708-880-0121  
Email: [asmith5283@yahoo.com](mailto:asmith5283@yahoo.com);

[aogrc@angelofgodresourcecenter.org](mailto:aogrc@angelofgodresourcecenter.org)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**Association of Asian Construction Enterprises**

\*  
5677 W. Howard  
Niles, IL 60714  
Phone: 847-673-7377

Fax: 847-673-2358  
Email: [nakmancorp@aol.com](mailto:nakmancorp@aol.com)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Austin African American Business Networking  
Assoc.**

5820 W. Chicago Ave.,  
Chicago, IL 60651

**Black Contractors United \***

12000 S. Marshfield Ave.  
Calumet Park, IL 60827  
Phone: 708-389-5730

Phone: 773-626-4497

Email: [aaabna@yahoo.com](mailto:aaabna@yahoo.com)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**Business Leadership Council \***

230 W. Monroe Street, Ste 2650

Chicago, IL 60606

Phone: 312-628-7844

Fax: 312-628-7843

Email: [Karen.r@businessleadershipcouncil.org](mailto:Karen.r@businessleadershipcouncil.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Chatham Business Association Small Business Dev. \***

800 E. 78<sup>th</sup> Street

Chicago, IL 60619

Phone: 773-994-5006

Fax: 773-855-8905

Email: [melindakelly@cbaworks.org](mailto:melindakelly@cbaworks.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Chicago Urban League \***

4510 S. Michigan Ave.

Chicago, IL 60653

Phone: 773-624-8810

Fax: 773-451-3579

Email: [sbrinston@thechicagourbanleague.org](mailto:sbrinston@thechicagourbanleague.org)

Web: [www.cul-chicago.org](http://www.cul-chicago.org)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

Fax: 708-389-5735

Email: [bcunewera@att.net](mailto:bcunewera@att.net)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**LGBT Chamber of Commerce of Illinois \***

3179 N. Clark St., 2nd Floor

Chicago, IL 60657

Phone: 773-303-0167

Fax: 773-303-0168

Email: [jholston@lgbtcc.com](mailto:jholston@lgbtcc.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Chicago Minority Supplier Development Council Inc. \***

105 W. Adams, Suite 2300

Chicago, IL 60603-6233

Phone: 312-755-2550

Fax: 312-755-8890

Email: [pbarreda@chicagomsdc.org](mailto:pbarreda@chicagomsdc.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Chicago Women in Trades (CWIT)**

2444 W. 16<sup>th</sup> Street

Chicago, IL 60608

Phone: 312-942-1444

Jayne Vellinga, Executive Director

Email: [jvellinga@cwit2.org](mailto:jvellinga@cwit2.org)

Web: [www.chicagowomenintrades2.org](http://www.chicagowomenintrades2.org)

Maintains list of certified firms: No

Provides training for businesses: Yes

**Contractor Advisors Business Development Corp. \***

1507 E. 53<sup>rd</sup> Street, Suite 906  
Chicago, IL. 60615  
Phone: 312-436-0301  
Email: [info@contractoradvisors.us](mailto:info@contractoradvisors.us)  
Web: [www.contractoradvisors.us](http://www.contractoradvisors.us)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Do For Self Community Development Co. \***

7447 S South Shore Drive, Unit 22B  
Chicago, IL 60649  
Phone: 773-356-7661  
Email: [dennisdoforself@hotmail.com](mailto:dennisdoforself@hotmail.com)  
Web: [www.doforself.org](http://www.doforself.org)

Maintains list of certified firms: No

Provides training for businesses: Yes

**Federation of Women Contractors \***

216 W. Jackson Blvd. #625  
Chicago, IL 60606  
Phone: 312-360-1122  
Fax: 312-750-1203  
Email: [fwcchicago@aol.com](mailto:fwcchicago@aol.com)  
Web: [www.fwcchicago.com](http://www.fwcchicago.com)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Cosmopolitan Chamber of Commerce**

1633 S. Michigan Avenue  
Chicago, IL. 60616  
Phone: 312-971-9594  
Fax: 312-341-9084

Email: [rmcgowan@cosmochamber.org](mailto:rmcgowan@cosmochamber.org)  
Web: [www.cosmochamber.org](http://www.cosmochamber.org)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Far South Community Development Corporation**

9923 S. Halsted Street, Suite D  
Chicago, IL 60628  
Phone: 773-941-4833  
Fax: 773-941-5252  
Email: [lacy@farsouth.org](mailto:lacy@farsouth.org)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**Fresh Start Home Community Development Corp.**

5168 S. Michigan Avenue, 4N  
Chicago, IL 60615  
Phone: 312-632-0811  
Fax: 855-270-4175  
Email: [Info@FreshStartNow.us](mailto:Info@FreshStartNow.us)  
Web: [www.FreshStartNow.us](http://www.FreshStartNow.us)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Greater Englewood Community Development Corp. \***

815 W. 63rd Street  
Chicago, IL 60621  
Phone: 773-651-2400

Fax: 773-651-2400

Email: [jharbin@greaterenglewoodcdc.org](mailto:jharbin@greaterenglewoodcdc.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Greater Far South Halsted Chamber of Commerce \***

10615 S. Halsted Street

Chicago, IL 60628

Phone: 518-556-1641

Fax: 773-941-4019

Email: [halstedchamberevents@gmail.com](mailto:halstedchamberevents@gmail.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Hispanic American Construction Industry Association (HACIA) \***

650 W. Lake St., Unit 415

Chicago, IL 60661

Phone: 312-575-0389

Fax: 312-575-0544

Email: [jperez@haciaworks.org](mailto:jperez@haciaworks.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Greater Pilsen Economic Development Assoc. \***

1801 S. Ashland

Chicago, IL 60608

Phone: 312-698-8898

Email: [greaterpilsen@gmail.com](mailto:greaterpilsen@gmail.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Greater Southwest Development Corporation**

2601 W. 63<sup>rd</sup> Street

Chicago, IL 60629

Phone: 773-362-3373

Fax: 773-471-8206

Email: [c.james@greatersouthwest.org](mailto:c.james@greatersouthwest.org)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**Illinois Hispanic Chamber of Commerce \***

222 Merchandise Mart Plaza, Suite 1212 c/o  
1871

Chicago, IL 60654

Phone: 312-425-9500

Email: [aalcantar@ihccbbusiness.net](mailto:aalcantar@ihccbbusiness.net)

Web: [www.ihccbbusiness.net](http://www.ihccbbusiness.net)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Illinois State Black Chamber of Commerce \***

411 Hamilton Blvd., Suite 1404  
Peoria, Illinois 61602  
Phone: 309-740-4430 / 773-294-8038

Fax: 309-672-1379

Email: [Larrylvory@IllinoisBlackChamber.org](mailto:Larrylvory@IllinoisBlackChamber.org);  
[vgilb66709@yahoo.com](mailto:vgilb66709@yahoo.com)  
[www.illinoisblackchamberofcommerce.org](http://www.illinoisblackchamberofcommerce.org)

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**JLM Business Development Center \***

2622 W. Jackson Boulevard  
Chicago, IL 60612  
Phone: 773-826-3295

Fax: 773-359-4021

Email: [jimbizcenter@gmail.com](mailto:jimbizcenter@gmail.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Latin American Chamber of Commerce \***

3512 W. Fullerton Avenue  
Chicago, IL 60647  
Phone: 773-252-5211

Fax: 773-252-7065

Email: [d.lorenzopadron@LACCUSA.com](mailto:d.lorenzopadron@LACCUSA.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**National Association of Women Business  
Owners \***

500 Davis Street, Ste 812  
Evanston, IL 60201

Phone: 773-410-2484

Fax: 847-328-2018

Email: [wjaehn@nawbochicago.org](mailto:wjaehn@nawbochicago.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**National Black Wall Street \***

4655 S. King Drive, Suite 203

Chicago, IL 60653

Phone: 773-268-6900

Fax: 773-392-0165

Email: [markallen2800@aol.com](mailto:markallen2800@aol.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**National Organization of Minority Engineers  
(NOME) \***

33 W. Monroe, Suite 1540  
Chicago, IL 60603

Phone: 312-960-1239

Email: [grandevents1@sbcglobal.net](mailto:grandevents1@sbcglobal.net)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Neighborhood Development Services, NFP \***

10416 South Maryland Avenue

Chicago, IL 60628

Phone: 773-413-9348

**Rainbow/PUSH Coalition \***

930 E. 50<sup>th</sup> Street

Chicago, IL 60615

Phone: 773-256-2768

Fax: 773-373-4103

Fax: 773-371-0032  
Email: [neighborhooddevservices@gmail.com](mailto:neighborhooddevservices@gmail.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Real Men Charities, Inc.**  
2423 E. 75<sup>th</sup> Street

Chicago, IL 60649  
Phone: 773-425-4113  
Email: [ymoyo@realmencook.com](mailto:ymoyo@realmencook.com)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**South Shore Chamber, Inc. \***  
1750 E. 71<sup>st</sup> Street  
Chicago, IL 60649-2000  
Phone: 773-955- 9508

Tonya Trice, Executive Director  
Email: [ttrice@southshorechamberinc.org](mailto:ttrice@southshorechamberinc.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**The Monroe Foundation**

1547 South Wolf Road

Email: [jmitchell@rainbowpush.org](mailto:jmitchell@rainbowpush.org)  
Web: [www.rainbowpush.org](http://www.rainbowpush.org)

Maintains list of certified firms: Yes

Provides training for businesses: No

**RTW Veteran Center**  
7415 E. End, Suite 120

Chicago, IL 60649  
Phone: 773-406-1069

Fax: 866-873-2494  
Email: [rtwvetcenter@yahoo.com](mailto:rtwvetcenter@yahoo.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**St. Paul Church of God in Christ Community  
Development Ministries, Inc. (SPCDM)**

4550 S. Wabash Avenue

Chicago, IL. 60653  
Phone: 773-538-5120  
Phone: 773-538-5120

Fax: 773-538-5125

Email: [spcdm@sbcglobal.net](mailto:spcdm@sbcglobal.net)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**US Minority Contractors Association, Inc. \***

1250 Grove Ave. Suite 200  
Barrington, IL 60010  
Phone: 847-708-1597

Hillside, Illinois 60162

Phone: 773-315-9720

Email: [omonroe@themonroefoundation.org](mailto:omonroe@themonroefoundation.org)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**Women's Business Development Center \***

8 S. Michigan Ave., 4th Floor

Chicago, IL 60603

Phone: 312-853-3477

Fax: 312-853-0145

Email: [fcurry@wbdc.org](mailto:fcurry@wbdc.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Women Construction Owners & Executives  
(WCOE) \***

Chicago Caucus

308 Circle Avenue

Forest Park, IL 60130

Phone: 708-366-1250

Email: [mkm@mkmservices.com](mailto:mkm@mkmservices.com)

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

Maintains list of certified firms: Yes

Provides training for businesses: No

Fax: 847-382-1787

Email: [admin@usminoritycontractors.org](mailto:admin@usminoritycontractors.org)

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

Maintains list of certified firms: Yes

Provides training for businesses: Yes

**Urban Broadcast Media, Inc.**

4108 S. King Drive,

Chicago, IL 60653

Phone: 312-614-1075

Email: [drleonfinney312@gmail.com](mailto:drleonfinney312@gmail.com)

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

Maintains list of certified firms: No

Provides training for businesses: Yes

**Your Community Consultants Foundation**

9301 S. Parnell Ave.,

Chicago, IL 60620

Phone: 773-224-9299

Fax: 773-371-0032

Email: [allen81354@aol.com](mailto:allen81354@aol.com)

Maintains list of certified firms: No

Provides training for businesses: Yes





Monica Jimenez, Deputy Procurement Officer

Department of Procurement Services

City of Chicago

121 North La Salle Street, Room 806

Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at \_\_\_\_\_.

Sincerely,

## SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case, however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their current Letter of Certification.

All Information Requested by this Schedule must Be Answered in the Spaces Provided. Do Not Refer to Your Joint Venture Agreement Except to Expand on Answers Provided on this Form. If Additional Space Is Required, Additional Sheets May Be Attached.

I. Name of joint venture: \_\_\_\_\_  
Address of joint venture: \_\_\_\_\_  
\_\_\_\_\_  
Phone number of joint venture: \_\_\_\_\_

II. Identify each non-MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

III. Identify each MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer'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) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.  
A. What are the percentage(s) of MBE/WBE ownership of the joint venture?  
    MBE/WBE ownership percentage(s) \_\_\_\_\_  
    Non-MBE/WBE ownership percentage(s) \_\_\_\_\_

B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):

1. Profit and loss sharing: \_\_\_\_\_
2. Capital contributions:
  - (a) Dollar amounts of initial contribution: \_\_\_\_\_

**Schedule B: Affidavit of Joint Venture (MBE/WBE)**

(b) Dollar amounts of anticipated on-going contributions: \_\_\_\_\_

3. Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Provide copies of all written agreements between venturers concerning this project.

6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):

A. Joint venture check signing:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Authority to enter contracts on behalf of the joint venture:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Signing, co-signing and/or collateralizing loans:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Acquisition of lines of credit:

\_\_\_\_\_  
\_\_\_\_\_

**Schedule B: Affidavit of Joint Venture (MBE/WBE)**

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E. Acquisition and indemnification of payment and performance bonds:

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F. Negotiating and signing labor agreements:

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G. Management of contract performance. (Identify by name and firm only):

1. Supervision of field operations: \_\_\_\_\_
2. Major purchases: \_\_\_\_\_
3. Estimating: \_\_\_\_\_
4. Engineering: \_\_\_\_\_

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

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B. Identify the managing partner, if any, and describe the means and measure of their compensation:

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C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

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IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-MBE/WBE firm, the MBE/WBE firm, or the joint venture.

**Schedule B: Affidavit of Joint Venture (MBE/WBE)**

Trade	Non-MBE/WBE Firm (Number)	MBE/WBE (Number)	Joint Venture (Number)

If any personnel proposed for this project will be employees of the joint venture:

- A. Are any proposed joint venture employees currently employed by either venturer?  
 Currently employed by non-MBE/WBE (number) \_\_\_\_\_ Employed by MBE/WBE \_\_\_\_\_
  
- B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:  
 \_\_\_\_\_
  
- C. Which venturer will be responsible for the preparation of joint venture payrolls:  
 \_\_\_\_\_
  
- X. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

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**Schedule B: Affidavit of Joint Venture (MBE/WBE)**

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

\_\_\_\_\_  
Name of MBE/WBE Partner Firm  
Firm

\_\_\_\_\_  
Name of Non-MBE/WBE Partner  
Firm

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Name and Title of Affiant

\_\_\_\_\_  
Name and Title of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-signed officers

\_\_\_\_\_  
(names of affiants)

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)

**Schedule C-1: Letter of Intent From MBE/WBE To Perform as Subcontractor, Supplier and/or  
Consultant**





**FOR  
NON-CONSTRUCTION  
PROJECTS ONLY**

**SCHEDULE C-1**  
MBE/WBE Letter of Intent to Perform as a  
Subcontractor, Supplier, or Consultant

Project Name: \_\_\_\_\_ Specification No.: \_\_\_\_\_

From: \_\_\_\_\_  
(Name of MBE/WBE Firm)

To: \_\_\_\_\_ and the City of Chicago.  
(Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago or Cook County, Illinois Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer." 60% participation is credited for the use of a MBE or WBE "regular dealer."

The undersigned is prepared to perform the following services in connection with the above named project/contract. If more space is required to fully describe the MBE or WBE proposed scope of work and/or payment schedule, including a description of the commercially useful function being performed. Attach additional sheets as necessary:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above described performance is offered for the following price and described terms of payment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SUB-SUBCONTRACTING LEVELS**

A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to non MBE/WBE contractors.

\_\_\_\_\_ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or WBE contractors.

**NOTICE: If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to Non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment.**

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago.

The undersigned has entered into a formal written mentor protégé agreement as a subcontractor/protégé with you as a Prime Contractor/mentor: ( ) Yes ( ) No

**NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.**

\_\_\_\_\_  
(Signature of President/Owner/CEO or Authorized Agent of MBE/WBE) (Date)

\_\_\_\_\_  
(Name/Title-Please Print)

\_\_\_\_\_  
(Email & Phone Number)

**Schedule D-1: Affidavit of Implementation of MBE/WBE Goals and Participation Plan**



**SCHEDULE D-1**  
 Compliance Plan Regarding MBE/WBE Utilization  
Affidavit of Prime Contractor

**FOR  
 NON-CONSTRUCTION  
 PROJECTS ONLY**

**MUST BE SUBMITTED WITH THE BID. FAILURE TO SUBMIT THE SCHEDULE D-1 WILL CAUSE THE  
 BID TO BE REJECTED. DUPLICATE AS NEEDED.**

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

Specification No.: \_\_\_\_\_

In connection with the above captioned contract, I HEREBY DECLARE AND AFFIRM that I am a duly authorized representative of \_\_\_\_\_  
 (Name of Prime Consultant/Contractor)

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the MBE/WBE goals of this contract.

All MBE/WBE firms included in this plan have been certified as such by the City of Chicago and/or Cook County, Illinois (Letters of Certification Attached).

**I. Direct Participation of MBE/WBE Firms:**

**NOTE:** The bidder/proposer shall, in determining the manner of MBE/WBE participation, first consider involvement with MBE/WBE firms as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract.

A. If bidder/proposer is a joint venture and one or more joint venture partners are certified MBEs or WBEs, attach copies of Letters of Certification, Schedule B form and a copy of Joint Venture Agreement clearly describing the role of each MBE/WBE firm(s) and its ownership interest in the joint venture.

B. Complete this section for each MBE/WBE Subcontractor/Supplier/Consultant participating on this contract:

1. Name of MBE/WBE: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Dollar Value of Participation \$ \_\_\_\_\_  
 Percentage of Participation % \_\_\_\_\_  
 Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed:<sup>1</sup> \_\_\_\_\_ %  
**Total Participation % \_\_\_\_\_**

2. Name of MBE/WBE: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_

<sup>1</sup> The Prime Contractor may claim an additional 0.333 percent participation credit (up to a maximum of five (5) percent) for every one (1) percent of the value of the contract performed by the MBE/WBE protégé firm.

**Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan**

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: \_\_\_\_%

**Total Participation %** \_\_\_\_\_

3. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: \_\_\_\_%

**Total Participation %** \_\_\_\_\_

4. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: \_\_\_\_%

**Total Participation %** \_\_\_\_\_

5. Attach Additional Sheets as Needed

**II. Indirect Participation of MBE/WBE Firms**

**NOTE:** This section need not be completed if the MBE/WBE goals have been met through the direct participation outlined in Section I. If the MBE/WBE goals have not been met through direct participation, Contractor will be expected to demonstrate that the proposed MBE/WBE direct participation represents the maximum achievable under the circumstances. Only after such a demonstration will indirect participation be considered.

MBE/WBE Subcontractors/Suppliers/Consultants proposed to perform work or supply goods or services where such performance does not directly relate to the performance of this contract:

1. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan**

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: \_\_\_\_%

**Total Participation %** \_\_\_\_\_

2. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: \_\_\_\_%

**Total Participation %** \_\_\_\_\_

3. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: \_\_\_\_%

**Total Participation %** \_\_\_\_\_

4. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: \_\_\_\_%

**Total Participation %** \_\_\_\_\_

5. Attach Additional Sheets as Needed

**Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan**

**III. Summary of MBE/WBE Proposal**

**A. MBE Proposal (Direct & Indirect)**

1. MBE Direct Participation

MBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
<b>Total Direct MBE Participation</b>		

2. MBE Indirect Participation

MBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
<b>Total Indirect MBE Participation</b>		

**B. WBE Proposal (Direct & Indirect)**

1. WBE Direct Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
<b>Total Direct WBE Participation</b>		

2. WBE Indirect Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
<b>Total Indirect WBE Participation</b>		

**Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan**

The Prime Contractor designates the following person as its MBE/WBE Liaison Officer:

\_\_\_\_\_  
(Name- Please Print or Type)

\_\_\_\_\_  
(Phone)

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, THAT NO MATERIAL FACTS HAVE BEEN OMITTED, AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.**

\_\_\_\_\_  
(Name of Prime Contractor – Print or Type)

State of: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

County of: \_\_\_\_\_

\_\_\_\_\_  
(Name/Title of Affiant – Print or Type)

\_\_\_\_\_  
(Date)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above signed officer \_\_\_\_\_  
(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

\_\_\_\_\_  
(Notary Public Signature)

SEAL:

Commission Expires: \_\_\_\_\_

**EXHIBIT 6 NAESB AGREEMENT**



# Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: \_\_\_\_\_

The parties to this Base Contract are the following:

PARTY A [INSERT COUNTERPARTY LEGAL ENTITY NAME]	PARTY NAME	PARTY B [INSERT COUNTERPARTY LEGAL ENTITY NAME]
	<i>ADDRESS</i>	
WWW: _____	<i>BUSINESS WEBSITE</i>	WWW: _____
	<i>CONTRACT NUMBER</i>	
	<i>D-U-N-S® NUMBER</i>	
<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:	<i>TAX ID NUMBERS</i>	<input type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
	<i>JURISDICTION OF ORGANIZATION</i>	
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<i>COMPANY TYPE</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	<i>GUARANTOR (IF APPLICABLE)</i>	
Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Selected	<i>PARTY CFTC CLASSIFICATION</i>	Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Selected
<b>CONTACT INFORMATION</b>		
ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____	▪ <i>COMMERCIAL</i>	ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____	▪ <i>SCHEDULING</i>	ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____	▪ <i>CONTRACT AND LEGAL NOTICES</i>	ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____	▪ <i>CREDIT</i>	ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____
ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____	▪ <i>TRANSACTION CONFIRMATIONS</i>	ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____
<b>ACCOUNTING INFORMATION</b>		
ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____	▪ <i>INVOICES</i> ▪ <i>PAYMENTS</i> ▪ <i>SETTLEMENTS</i>	ATTN: _____ TEL#: _____      FAX#: _____ EMAIL: _____
BANK: _____ ABA: _____      ACCT: _____ OTHER DETAILS: _____	<i>WIRE TRANSFER NUMBERS (IF APPLICABLE)</i>	BANK: _____ ABA: _____      ACCT: _____ OTHER DETAILS: _____
BANK: _____ ABA: _____      ACCT: _____ OTHER DETAILS: _____	<i>ACH NUMBERS (IF APPLICABLE)</i>	BANK: _____ ABA: _____      ACCT: _____ OTHER DETAILS: _____
ATTN: _____ ADDRESS: _____	<i>CHECKS (IF APPLICABLE)</i>	ATTN: _____ ADDRESS: _____

# Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<b>Section 1.2</b> <input type="checkbox"/> Oral (default) Transaction      OR Procedure <input type="checkbox"/> Written	<b>Section 10.2</b> <input type="checkbox"/> No Additional Events of Default (default) Additional <input type="checkbox"/> Indebtedness Cross Default Events of <input type="checkbox"/> Party A: _____ Default <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____
<b>Section 2.7</b> <input type="checkbox"/> 2 Business Days after receipt (default) Confirm Deadline OR <input type="checkbox"/> _____ Business Days after receipt	
<b>Section 2.8</b> <input type="checkbox"/> Seller (default) Confirming Party OR <input type="checkbox"/> Buyer <input type="checkbox"/> _____	
<b>Section 3.2</b> <input type="checkbox"/> Cover Standard (default) Performance      OR Obligation <input type="checkbox"/> Spot Price Standard	<b>Section 10.3.1</b> <input type="checkbox"/> Early Termination Damages Apply (default) Early              OR Termination <input type="checkbox"/> Early Termination Damages Do Not Apply Damages
<b>Note: The following Spot Price Publication applies to both of the immediately preceding.</b>	
<b>Section 2.31</b> <input type="checkbox"/> Gas Daily Midpoint (default) Spot Price <input type="checkbox"/> Argus Natural Gas Americas VWA Publication <input type="checkbox"/> _____	<b>Section 10.3.2</b> <input type="checkbox"/> Other Agreement Setoffs Apply (default) Other <input type="checkbox"/> Bilateral (default) Agreement <input type="checkbox"/> Triangular Setoffs OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
<b>Section 6</b> <input type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes              OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
<b>Section 7.2</b> <input type="checkbox"/> 25 <sup>th</sup> Day of Month following Month of delivery Payment Date      (default) OR <input type="checkbox"/> Day of Month following Month of delivery	<b>Section 15.5</b> _____ Choice Of Law
<b>Section 7.2</b> <input type="checkbox"/> Wire transfer (default) Method of Payment <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	<b>Section 15.10</b> <input type="checkbox"/> Confidentiality applies (default) Confidentiality OR <input type="checkbox"/> Confidentiality does not apply
<b>Section 7.7</b> <input type="checkbox"/> Netting applies (default) Netting            OR <input type="checkbox"/> Netting does not apply	
<input type="checkbox"/> <b>Special Provisions</b> Number of sheets attached: _____	
<input type="checkbox"/> <b>Addendum(s):</b> _____	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

[INSERT COUNTERPARTY LEGAL ENTITY NAME]	PARTY NAME	[INSERT COUNTERPARTY LEGAL ENTITY NAME]
By: _____	SIGNATURE	By: _____
[Insert Name]	PRINTED NAME	[Insert Name]
[Insert Title]	TITLE	[Insert Title]

# General Terms and Conditions

## Base Contract for Sale and Purchase of Natural Gas

### SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

**The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.**

#### **Oral Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an ECS transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by ECS, within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

#### **Written Transaction Procedure:**

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by ECS, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via ECS by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party by ECS or in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation; provided, for a Transaction Confirmation using NAESB WGQ Standard No. 6.4.2 dataset sent via ECS, the receiving party shall notify the sending party via ECS of receiving party's acceptance or dispute of the Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

### SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed, by ECS or in writing, by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an ECS transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "ECS" shall mean a secure electronic communication exchange of (i) this Contract, (ii) Transaction Confirmations, or (iii) invoices under Section 7. ECS may be performed using: (i) encryption of the exchanged document, (ii) encryption of the exchanged communication, (iii) secured through a secure login via NAESB WGQ EBB/EDM, or (iv) a facsimile sent through a secured fax server. ECS may be implemented by the parties or by using one or more third party service providers. It is the responsibility of each of the counterparties to insure the selected third party service provider(s) communicates in a secure or encrypted manner.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate

amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.

2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.31. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.32. "Transaction Confirmation" shall mean a document transmitted by ECS, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.

2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

### SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

**The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.**

**Cover Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

**Spot Price Standard:**

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed by ECS or in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed by ECS or in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

## SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

## SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

## SECTION 6. TAXES

**The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.**

**Buyer Pays At and After Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

**Seller Pays Before and At Delivery Point:**

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

## SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide the sender of the invoice a Notice of any dispute and supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to by ECS or in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

## SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the physical or electronic addresses specified by ECS or in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be by ECS or in writing via a nationally recognized overnight courier service, first class mail or hand delivered; provided, however, a Notice pursuant to Section 10.2, 10.3 or 10.4 shall not be sent by ECS unless explicitly agreed to by the parties in a Special Provision.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notice by ECS shall be deemed to have been received at the time and day when received by the receiver's ECS mechanism. If the day on which such ECS is received is not a Business Day or is after five p.m. on a Business Day, then such ECS shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

## SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or (ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

**The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.**

**Early Termination Damages Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound



as of the Early Termination Date (including but not limited to “evergreen provisions”) shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

**Early Termination Damages Do Not Apply:**

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

**The parties have selected either “Other Agreement Setoffs Apply” or “Other Agreement Setoffs Do Not Apply” as indicated on the Base Contract.**

**Other Agreement Setoffs Apply:**

**Bilateral Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

**Triangular Setoff Option:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

**Other Agreement Setoffs Do Not Apply:**

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the “Net Settlement Amount”). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under “Money Rates” by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

## SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed by ECS or in writing by both parties.

## SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

## SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

## SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by ECS or in writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract, by ECS or in writing, on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed by ECS or in writing by both parties.

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored in digital formats (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

**DISCLAIMER:** The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

The copyright in this Contract is owned by NAESB, and market participants are encouraged to review NAESB Copyright Policy and Companies with Access to NAESB Standards under the Copyright Policy posted by NAESB on its website at <https://www.naesb.org/pdf2/copyright.pdf>. Please review this posting and if your company's name is not listed as having access, please obtain access by contacting the NAESB Office per the contact information in the Copyright Policy.

TRANSACTION CONFIRMATION  
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____	
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed by ECS or in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.		
<b>SELLER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Email: _____ Instant Message (IM) and Carrier: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Email: _____ Instant Message (IM) and Carrier: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	
Contract Price: \$ _____/MMBtu or _____		
Delivery Period: Begin: _____, _____ End: _____, _____		
<b>Performance Obligation and Contract Quantity: (Select One)</b>		
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):		
<b>Special Conditions:</b>    		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

## ADDENDUM 1 - CITY OF CHICAGO TERMS AND CONDITIONS

### **Additional City Terms:**

**1. Funding.** The source of funds for payments under this Agreement are Fund numbers \_\_\_\_\_ . Payments under this Agreement must not exceed) \_\_\_\_\_ without a written amendment. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the City.

**2. NON-APPROPRIATION.** If no funds or insufficient funds are available, appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City will notify Contractor in writing of that occurrence, and this Agreement 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 Agreement are exhausted. Payments for Gas provided prior to the date of notification will be made to Contractor except that no payments will be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.

### **3. Inspector General**

It is the duty of any bidder, proposer, contractor or consultant, 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, consultant, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56, respectively, of the Municipal Code of Chicago. Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago. All subcontracts must inform subcontractors of the provision and require understanding and compliance with it.

### **4. Business Relationships with Elected Officials**

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

from whom or which he reasonably expects to derive any income or compensation in the following twelve months.

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

**5. Warranties And Representations.** In connection with signing and carrying out this Agreement, Contractor:

(a) warrants that Contractor is appropriately licensed under Illinois law to provide the Natural Gas required under this Agreement and will provide no Natural Gas for which a professional license is required by law and for which Contractor is not appropriately licensed;

(b) represents that Contractor and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1; and

(c) acknowledges that Contractor and its Subcontractors understand and will abide by all provisions of Chapter 2-26-010 et seq. of the Municipal Code.

## **6. Prohibitions on Certain Contributions**

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

## **7. Ethics**

A. In addition to the foregoing warranties and representations, Contractor warrants:

- i. no officer, agent or employee of the City is employed by Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under the Municipal Code of Chicago (Chapter 2-156).
- ii. no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any subcontractors to the Contractor or higher tier subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

B. Contractor further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.



## **8. Conflicts of Interest**

No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

## **9. Right to Offset**

In connection with Section 2-92-380 of the Municipal Code of Chicago:

A. In accordance with Section 2-92-380 of the Municipal Code of Chicago and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by Contractor to the City. For purposes of this Section, "outstanding parking violation complaint" means a parking ticket, notice of parking violation or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint. "Debt" means a specified sum of money owed to the City for which the period granted for payment has expired.

B. Notwithstanding anything herein to the contrary, no such debt(s) or outstanding parking violation complaint(s) will be offset from the price or compensation due under this Agreement if one or more of the following conditions are met:

i. Contractor has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking violation complaints and/or debts owed to the City and Contractor is in compliance with the agreement; or

ii. Contractor is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or

iii. Contractor has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

## **10. Waste Provisions**

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

7-28-390 Dumping on public way;

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

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

This section does not limit 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 Agreement.

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

### **11. Firms Owned or Operated by Individuals 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.

### **12. Non-Inclusion on Certain Lists**

Contractor warrants and represents that neither Contractor nor an Affiliate of Contractor (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of 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 of Contractor" means a person or entity that 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.

### **13. Compliance With All Laws.**

#### **A. Compliance with All Laws Generally**

Contractor must observe and 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 Agreement, including those set forth in this section, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also.

Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

#### **B. Nondiscrimination**

(i) Contractor in performing its services under this Agreement, Contractor must comply with applicable laws prohibiting discrimination against individuals and groups.

**a. Federal Requirements** In performing its services under this Agreement, Contractor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Contractor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Contractor must comply with, and the procedures Contractor utilizes and the services Contractor provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; 41 C.F.R. Part 60 et seq. (1990); and all other applicable federal statutes, regulations and other laws.

## **b. State Requirements**

Contractor must comply with, and the procedures Contractor utilizes and the services Contractor provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 111. Admin. Code § 750 Appendix A. Furthermore, Contractor must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and all other applicable state statutes, regulations and other laws.

**c. City Requirements** Contractor must comply with, and the procedures Contractor utilizes and the services Contractor provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 et seq. of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations. d. Subcontractors Contractor must incorporate all of this provision by reference in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement.

## **14. Wages**

### (a) 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. A copy of the Order may be downloaded from the Chicago City Clerk's website at:

<http://chicityclerk.com/wp-content/uploads/2014/09/Executive-Order-No.-2014-1.pdf>

If this Agreement was advertised on or after October 1, 2014, Contractor must comply with Mayoral Executive Order 2014-1 and any applicable regulations issued by the CPO. The Minimum Wage to be paid pursuant to the Order as of July 1, 2021 is \$15.00 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.

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 Agreement 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.

## **15. Economic Disclosure Statement**

Further, Contractor must execute an Economic Disclosure Statement and Affidavit ("EDS"). Notwithstanding acceptance by the City of the EDS, Contractor's failure in the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Contractor must promptly update its EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate.

## **16. Independent Contractor**

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

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

(i) The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with the Contractor performing the Services required under this Agreement.

(ii) Contractor is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.

(iii) The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Contractor.

## **17. City Hiring Plan Prohibitions**

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

B. Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Agreement are employees or subcontractors of Contractor, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.

C. Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, 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 Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

D. In the event of any communication to Contractor by a City employee or City official in violation of paragraph B above, or advocating a violation of paragraph C above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement. Contractor will also cooperate with any inquiries by OIG Hiring Oversight.

## **18. Ineligibility to do Business with City**

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.

## **19. Duty to Report Corrupt or Unlawful Activity**

Pursuant to §2-156-018 of the Municipal Code, 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 §1-23-020 of the Municipal Code. Knowing failure to make such a report will be an event of default under this Agreement. Reports may be made to the Inspector General's toll-free hotline, 866-IG-TIPLINE (866-448-4754).

**20. Governing Law and Jurisdiction.** This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois. Contractor irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Contractor, or by personal delivery on any officer, director, or managing or general agent of Contractor. If any action is brought by Contractor against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

## **21. Supplemental Contract Terms relating to Executive Order 2021-2.**

### **1.1 Supplemental to Special Conditions Regarding MBE Commitment and WBE Commitment or Special Conditions Regarding DBE Commitment: Quarterly Reporting**

#### **1.1.1 Policy**

Pursuant to Mayoral Executive Order 2021-2, contractors must submit quarterly reports regarding the utilization of MBE and WBE firms, or DBE firms, on their contracts.

#### **1.1.2. Projected Utilization Schedule**

Prior to contract award, anticipated contract awardee must submit a "Projected Utilization Schedule," in a form acceptable to the CPO, showing when and to what extent in the schedule for performance of the Contract the MBEs and WBEs or DBEs listed on the Schedules C and D for the Contract are expected to be used toward the contract-specific goals. Contracts that do not have goals are exempt from this requirement.

For master agreements for task order professional services awarded pursuant to a Request for Qualifications, Projected Utilization Schedules for each task will be submitted with the task order proposal and finalized prior to award or assignment of the task, as applicable.

The CPO may require explanations or submittal of a revised or more detailed Schedule at any time prior to or after award of the contract as the CPO deems appropriate in order to facilitate compliance with the M/WBE or DBE commitments of the Contract.

#### **1.1.3 Quarterly Summary Utilization Reports**

Each quarter, Contractor must submit a Summary Utilization Report, in a form acceptable to the CPO, comparing projected usage with actual usage. If actual usage is more than 5% below the value of projected usage (based on a percentage of the value of anticipated M/WBE expenditures), Contractor must provide an explanation for the discrepancy, and a recovery plan. Recovery plans should include a proposed revised Projected Utilization Schedule if Contractor anticipates that actual utilization will not meet projected utilization before the next quarterly report would be due. The CPO may require Contractor to meet with the City to discuss and revise the recovery plan as the CPO deems appropriate.

#### **1.1.4. Changes to Compliance Plan**

Requests for approval of revisions to Contractor's Compliance Plan must be accompanied by a revised Projected Utilization Schedule consistent with the request.

### **1.2 Supplement to Standard Terms and Conditions: Business Diversity Program Reporting**

#### **1.2.1 Policy**

Pursuant to Mayoral Executive Order 2021-2, contractors must submit annual reports regarding the contractors' efforts regarding utilization of MBE and WBE firms, and other historically underutilized firms.

#### **1.2.2. Definitions**

"Business Diversity Program" means a program or initiative of a business enterprise which encourages or facilitates the use of minority-owned, women-owned, and other historically underutilized businesses as contractors, consultants, suppliers, or service providers for that business.

"Certified Firms" means firms possessing certifications recognized by the City of Chicago pursuant to MCC Chapter 2-92 or 49 CFR Parts 23 or 26. Specifically, MBEs, WBEs, BEPDs, VBEs, and DBEs.

#### **1.2.3 Business Diversity Program Reports**

Contractor must submit an annual report, in a form acceptable to the CPO, on July 1 of each year (or other date designated by the CPO) containing information about the Contractor's Business Diversity Program, if information is available. However, for Contracts awarded June 1 through July 1, the due date for the first annual report will be August 1, all subsequent reports will be due July 1. Information to be provided will include:

- Whether Contractor has a Business Diversity Program.
- Description of the Contractor's Business Diversity Program, if any.
- Information on expenditure of goods and services from minority-owned firms and women-owned firms during the prior calendar year, expressed in dollars and percentages, to the extent information is available. For reports due in 2021, information on expenditures in both 2019 and 2020 should be provided if available.
- For each year after the first year, information on progress or changes in the program in the prior year, if such information exists.



Reports shall be submitted to a City office or location anticipated to be identified by June 15, 2021.

**1.2.4. Applicability**

Contractor must submit the reports required by this Section 1.2 unless:

- (A) Contractor is a Certified Firm; or
- (B) The Contract is for professional consulting services of an individual who is either the majority owner of the Contractor or is him- or herself the contracting party as a sole proprietor; or
- (C) The aggregate award value of all City contracts awarded to Contractor between May 31 of the prior year and May 31 of the current year is less than \$100,000; or
- (D) The CPO has otherwise notified the Contractor in writing that the requirement does not apply or that an exception will be made as outlined in Mayoral Executive Order 2021-2.

However, Contractors not required to report may report voluntarily.

## APPENDIX 1 - ECONOMIC DISCLOSURE STATEMENT (EDS) AND AFFIDAVIT

### ONLINE CITY OF CHICAGO ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT (EDS) INSTRUCTIONS

WHEN SUBMITTING YOUR RESPONSE TO THIS REQUEST FOR QUALIFICATIONS (RFQ), FOR NATURAL GAS SUPPLY, THE RESPONDENT(S) SHALL SUBMIT 2 DOCUMENTS: 1) A "**CERTIFICATE OF FILING**" EVIDENCING COMPLETION OF YOUR ONLINE EDS AND 2) AN EXECUTED **ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT** SIGNED BY AN AUTHORIZED OFFICER BEFORE A NOTARY.

#### 1. ONLINE EDS FILING

##### 1.1. ONLINE EDS FILING REQUIRED PRIOR TO RESPONSE DUE DATE

The Respondent shall complete an online EDS prior to the response due date. A Respondent who does not file an electronic EDS prior to the response due date may be found non-responsive and its response rejected. If you are unable to complete the online EDS and print a Certificate of Filing prior to the response due date, the City will accept a paper EDS provided written justification is provided explaining your good faith efforts to complete it before the response due date and the reasons why it could not be completed.

**NOTE: ALWAYS SELECT THE "CONTRACT" (NOT UPDATE) BOX WHEN COMPLETING AN ONLINE EDS TO ENSURE A NEW CONTRACT SPECIFIC ONLINE EDS IS CREATED RELATED TO THE SOLICITATION DOCUMENT. CLICKING THE UPDATE BOX ONLY UPDATES PREVIOUS EDS INFORMATION.**

##### 1.2. ONLINE EDS WEB LINK

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

##### 1.3. ONLINE EDS NUMBER

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

EDS Number:

##### 1.4. ONLINE EDS CERTIFICATION OF FILING AND ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT

Upon completion of the online submission process, the Respondent will be able to print a hard copy Certificate of Filing. The Respondent should submit the signed Certificate of Filing and Attachment A, Online EDS Acknowledgement form with its response. Please insert your Certification of Filing and Attachment A, Online EDS Acknowledgement form following the Cover Letter. See Section 6.2.11, Required Content of Qualifications in the RFQ. A Respondent who does not include a signed Certificate of Filing and/or Attachment A, Online EDS Acknowledgement form with its response must provide it upon the request of the Chief Procurement Officer.

### 1.5. PREPARATION CHECKLIST FOR REGISTRATION

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

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

### 1.6. PREPARATION CHECKLIST FOR EDS SUBMISSION

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

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

1. Invitation number if you were provided with an invitation number.
2. Site address that is specific to this EDS.
3. Contact that is responsible for this EDS.
4. EDS document from previous years, if available.
5. Ownership structure, and if applicable, owners' company information:
  - a. % of ownership
  - b. Legal Name
  - c. FEIN/SSN
  - d. City of Chicago Respondent Number, if available.
  - e. Address
6. List of Commissioners, officers, titleholders, etc. (if applicable).
7. For partnerships/LLC/LLP/Joint ventures, etc.:

- a. List of controlling parties (if applicable)

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

8. Contract related information (if applicable):

- a. City of Chicago contract package
- b. Cover page of City of Chicago Qualifications/solicitation package
- c. If EDS is related to a mod, then cover page of your current contract with the City.

9. List of subcontractors and retained parties:

- a. Name
- b. Address
- c. Fees – Estimated or paid

## 1.7. EDS FREQUENTLY ASKED QUESTIONS

### **Q: Where do I file?**

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

### **Q: How do I get help?**

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

### **Q: Why do I have to submit an EDS?**

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

### **Q: Who is the Applicant?**

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

### **Q: Who is the Disclosing Party?**

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

**Q: What is an entity or legal entity?**

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

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

A: "Person" means a human being.

**Q: Who must submit an EDS?**

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

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

**Q: What information is needed to submit an EDS?**

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

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

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

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

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

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

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

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

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

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

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

**Q: Who is the EDS Captain?**

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

**Q: Why do we need EDS Captains?**

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

**Q: Who is the EDS team?**

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

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

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

**Q: How do I complete an Online EDS?**

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

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

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

**Q: How do I attach documents?**

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

**Q: Who can complete an Economic Disclosure Statement online?**

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

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

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

**Q: Will my information be secure?**

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

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

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

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

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

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

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

**Q: Can I save a partially complete EDS?**

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

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

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

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

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

- A PDF viewer such as Adobe Reader is installed, and your web browser is configured to display PDFs automatically. You may download and install Adobe Reader free at [www.adobe.com/products/reader/](http://www.adobe.com/products/reader/)
- Your web browser is set to permit running of JavaScript.
- Your web browser allows cookies to be set for this site. Please note that while we use cookies in the Online EDS, we do not use them to track personally identifiable information, so your privacy is maintained.
- Your monitor resolution is set to a minimum of 1024 x 768.
- While not required to submit an EDS, if you wish to view the training videos, you must have Adobe Flash Plugin version 9 or higher, speakers, and sound. Please note that very old computers may not be able to run Adobe Flash and will not be able to play the training videos. In that case, we encourage you to seek help using the Online EDS Manuals. You may download and install Adobe Flash Plugin free at <http://get.adobe.com/flashplayer>

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



**ATTACHMENT A**

**ONLINE EDS ACKNOWLEDGEMENT**

The undersigned, hereby acknowledges having received RFQ for Natural Gas containing a full set of RFQ Documents, including, Addenda Numbers (none unless indicated here)

\_\_\_\_\_, and affirms that the Respondent shall be bound by all the terms and conditions contained in the RFQ Documents, regardless of whether a complete set thereof is attached to this response.

Under penalty of perjury, the undersigned: (1) warrants that he/she was authorized to submit an EDS on behalf of the Disclosing Party on-line, (2) warrants that all certifications and statements contained in the EDS are true, accurate and complete as of the date the EDS was submitted on-line, and (3) further warrants that, as of the date of submission of this response, there have been no changes in circumstances since the date that the EDS was submitted that would render any certification in the EDS false, inaccurate or incomplete.

Further, the undersigned being duly sworn deposes and says on oath that no disclosures of ownership interests have been withheld and the information provided therein to the best of its knowledge is current and the undersigned has not entered into any agreement with any other respondent or prospective respondent or with any other person, firm or corporation relating to the price named in this proposal or any other proposal, nor any agreement or arrangement under which any act or omission in restraining of free competition among respondents and has not disclosed to any person, firm or corporation the terms of this proposal or the price named herein.

COMPANY NAME: \_\_\_\_\_

(Print or Type)

AUTHORIZED OFFICER SIGNATURE: \_\_\_\_\_

TITLE OF SIGNATORY: \_\_\_\_\_

(Print or Type)

BUSINESS ADDRESS: \_\_\_\_\_

(Print or Type)

State of \_\_\_\_\_ (Affix Corporate Seal)

County of \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by

\_\_\_\_\_ as President (or other authorized officer) and

\_\_\_\_\_ as Secretary of \_\_\_\_\_ (Company Name)

Notary Public Signature: \_\_\_\_\_ (Seal)

## APPENDIX 2 - INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE

Contractor must provide and maintain at Contractor's own expense, until Contract completion and during the time period following completion if Contractor is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Contract.

### A. INSURANCE TO BE PROVIDED

#### 1) Workers Compensation and Employers Liability (Primary and Umbrella)

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit; and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

#### 2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$5,000,000 per occurrence or for the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Contractor's work, services or operations and completed operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Consultant's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

#### 3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services or operations to be performed, the Contractor must maintain Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence, or for the full per occurrence limits of the policy, whichever is greater for bodily injury and property damage. Coverage must include but not be limited to the following: ownership, maintenance, or use of any auto whether owned, leased, non-owned or hired used in the performance of the work, both on and off the City sites including loading and unloading.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$50,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Contractor may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Professional Liability

When any professional consultants perform work, services, or operations in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$5,000,000. Coverage must include but not be limited to, pollution liability if environment site assessments will be done. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6) Contractors Pollution Liability

When any work, services, or operations performed involves a potential pollution risk that may arise from the operations of Contractor's scope of services Contractors Pollution Liability must be provided or caused to be provided, covering bodily injury, property damage and other losses caused by pollution conditions with limits of not less than \$5,000,000 per occurrence. Coverage must include but not be limited to completed operations, contractual liability, defense, excavation, environmental cleanup, remediation, and disposal and if applicable, include transportation and non-owned disposal coverage. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City is to be named as an additional insured.

7) Railroad Protective Liability (when applicable)

When any work, services, or operations is to be done adjacent to or on railroad or transit property, Contractor must provide, with respect to the operations that Contractor or subcontractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. An insurance binder will be accepted until such time the policy is submitted.

8) Property

Contractor is responsible for all loss or damage to City property at full replacement cost.  
Contractor is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools, and supplies) owned, rented or used by Contractor.

**B. ADDITIONAL REQUIREMENTS**

Evidence of Insurance. Contractor must furnish the City, Department of Procurement Services, City Hall, Room 806, 121 North LaSalle Street, Chicago, IL 60602, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Contract, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. Contractor must submit evidence of insurance prior to Contract award. The receipt of any certificate does not constitute Contract by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Contract. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Contractor, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Contractor must advise all insurers of the Contract provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Contractor for liabilities which may arise from or relate to the Contract. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Contractor to comply with required coverage and terms and conditions outlined herein will not limit Contractor's liability or responsibility nor does it relieve Contractor of the obligation to provide insurance as specified in this Contract. Nonfulfillment of the insurance conditions may constitute a violation of the Contract, and the City retains the right to suspend this Contract until proper evidence of insurance is provided, or the Contract may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Contractor must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

Waiver of Subrogation. Contractor hereby waives its rights and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance herein for any loss arising from or relating to this Contract. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Contractor's insurer(s).

Contractors Insurance Primary. All insurance required of Contractor under this Contract shall be endorsed to state

that Contractor insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Contractor's Liabilities. The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Contractor under this Contract.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contractor any limitation placed on the indemnity in this Contract given as a matter of law.

Insurance and Limits Maintained. If Contractor maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and shall be entitled the higher limits and/or broader coverage maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Joint Venture or Limited Liability Company. If Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Contractor. If Contractor desires additional coverages, the Contractor will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Contractor shall name the Subcontractor(s) as a named insured(s) under Contractor's insurance or Contractor will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Contractor. Contractor shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Contractor is responsible for ensuring that each Subcontractor has named the City as an additional insured where required and name the City as an additional insured on an additional insured endorsement form acceptable to the City. Contractor is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Contractor must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Contractor's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Contract to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.