Specification Number _____
Contract Number _____
Requisition Number _____
Vendor Number _____

PROFESSIONAL SERVICES AGREEMENT

STANDARD TERMS AND CONDITIONS

BETWEEN

THE CITY OF CHICAGO
DEPARTMENT OF TRANSPORTATION

AND

CONSULTANT COMPANY NAME

PROFESSIONAL ARCHITECTURAL & ENGINEERING SERVICES

RAHM EMANUEL
MAYOR

JAMIE L. RHEE
CHIEF PROCUREMENT OFFICER

FHWA FUNDS

PROFESSIONAL SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS

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PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into as of the _____ **of** _____ **2012** by and between_____, an _____ Corporation ("**Consultant**"), located at, _____, and the City of Chicago ("**City**"), a municipal corporation and home rule unit of local government existing under the laws of the State of Illinois, acting through its Department of Transportation ("**Department**").

The City and Consultant agree as follows:

TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

1.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"**Additional Services**" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 2.1 and Exhibit 1 and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 10.3 of this Agreement before Consultant is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"**Agreement**" means this Professional Services Agreement, including all exhibits, which are attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"**Chief Procurement Officer**" means the Chief Procurement Officer of the City of Chicago and any representative duly authorized in writing to act on his behalf.

"**Commissioner**" means the Commissioner of the Department of Transportation, and any representative authorized in writing to act on the Commissioner's behalf.

"FHWA" means the Federal Highway Administration.

"FTA" means the Federal Transit Administration

"**Services**" means, collectively, the services, duties and responsibilities described in Article 2 and Exhibit 1 of this Agreement and any and all work necessary to

complete them or carry them out fully and to the standard of performance required in this Agreement.

"**Subcontractor**" means any person or entity with whom Consultant contracts to provide any part of the Services, including subcontractors and subconsultants of any tier, whether or not in privity with Consultant.

1.2 Interpretation

(a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

(b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.

(f) All references to a number of days mean calendar days, unless indicated otherwise.

1.3 Order of Precedence of Component Parts

In the event of any conflict or inconsistency between the terms set forth in Article 1 through Article 13 of this Agreement and the terms set forth in Exhibit 1 through Exhibit 4, including the Attachments to the Exhibits, the terms and provisions contained in Article 1 through 13 of this Agreement will take precedence over the terms and provisions contained in Exhibit 1 through Exhibit 4 except to the extent such terms and provisions are more favorable to the City.

Article 1 through 13 govern the legal relationship between the parties and Exhibit 1 and Exhibit 2 describe the Services Consultant is to perform under this Agreement, set forth the Key Personnel, set forth the time limits for Consultant's performance, set forth the insurance requirements for the project, and set forth the compensation

schedule for Consultant. As a result, the City and Consultant agree that any terms or matters set forth in either Exhibit 1 or Exhibit 2, including the Attachments to the Exhibits, that do not exclusively pertain to defining the Services Consultant is to perform, the Key Personnel, the time limits for Consultant's performance, the insurance requirements, and the compensation schedule for Consultant are of no effect as to this Agreement and, regardless of whether or not the City approves such terms or matters, are not binding on the City, except to the extent that they would diminish the City's obligations under this Agreement or increase Consultant's obligations or liabilities under this Agreement.

ARTICLE 2. DUTIES AND RESPONSIBILITIES OF CONSULTANT

2.1 Scope of Services

Consultant must provide the Services described in Exhibit 1, Scope of Services and Schedule for Performance, and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. Consultant must provide the Services in accordance with the standards of performance set forth in Section 2.3. Consultant must provide and maintain at Consultant's own expense, the insurance coverages and requirements specified in Exhibit 1.

2.2 Deliverables

In carrying out its Services, Consultant must prepare or provide to the City various Deliverables. "**Deliverables**" include work product, such as designs, plans and specifications, written reviews, recommendations, reports and analyses, produced by Consultant for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Consultant has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Consultant of its failure. If Consultant does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 9.1.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Consultant of its commitments under this Agreement.

2.3 Standard of Performance

Consultant must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement.

Consultant must assure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Consultant must provide copies of any such licenses. Consultant remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Consultant or its Subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Agreement.

If Consultant fails to comply with the foregoing standards, Consultant must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Consultant of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Consultant either under this Agreement, at law or in equity.

2.4 Personnel

(a) Adequate Staffing

Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Consultant must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Consultant to the City and with written consent of the City, which consent the City will not withhold unreasonably. If the City fails to object to the revision within 14 days after receiving the notice, then the revision will be considered accepted by the City.

(b) Key Personnel

Consultant must not reassign or replace Key Personnel without the written consent of the City, which consent the City will not unreasonably withhold. "**Key Personnel**" means those job titles and the persons assigned to those

positions in accordance with the provisions of this Section 2.4(b), and set forth in Exhibit 1, Attachment 1-A . The Department may at any time in writing notify Consultant that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Consultant must immediately suspend the services of the key person or persons and must replace him or her or them in accordance with the terms of this Agreement.

(c) **Salaries and Wages**

Consultant and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Consultant underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Consultant, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Consultant to the respective employees to whom they are due. The parties acknowledge that this Section 2.4(c) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

2.5 Indemnification

(a) Consultant must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:

(i) injury, death or damage of or to any person or property;

(ii) any infringement or violation of any property right (including patent, trademark or copyright);

(iii) Consultant's failure to perform or cause to be performed Consultant's covenants and obligations as and when required under this Agreement, including Consultant's failure to perform its obligations to any Subcontractor;

(iv) the City's exercise of its rights and remedies under Section 9.2 of this Agreement; and

(v) injuries to or death of any employee of Consultant or any Subcontractor under any workers compensation statute.

(b) "**Losses**" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Consultant's breach of this Agreement or to Consultant's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.

(c) Consultant's obligations to indemnify, keep, and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses excludes that portion of Losses caused by any act, error or omission on the part of the particular City officer(s), representative(s), elected and appointed official(s), agent(s) or employee(s) seeking indemnification under this Section 2.5 if Consultant's indemnification would violate the provisions of the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

(d) At the City Corporation Counsel's option, Consultant, subject to Section 2.5(c) above, must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Consultant of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

(e) To the extent permissible by law, Consultant waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Consultant that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

(f) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during Consultant's performance of Services beyond the term. Consultant acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by Consultant's duties under this

Agreement, including the insurance requirements in Exhibit 1 of this Agreement.

2.6 Ownership of Documents

All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Consultant under this Agreement are property of the City, including, as further described in Sections 2.7 and 2.8 below, all copyrights and patents inherent in them or their preparation. During performance of its Services, Consultant is responsible for any loss or damage to the Deliverables, data, findings or information while in Consultant's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Consultant. If not restorable, Consultant must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 2.5.

2.7 Federal and City Interests in Patents

(a) If any invention, improvement or discovery of Consultant or its Subcontractors is conceived or first actually reduced to practice during performance of or under this Agreement, and that invention, improvement or discovery is patentable under the laws of the United States of America or any foreign country, Consultant must notify the City immediately and provide the City with a detailed report regarding such invention, improvement or discovery.

(b) If the City or the federal government determines that patent protection for the invention, improvement or discovery should be sought, Consultant agrees to seek patent protection for the invention, improvement or discovery and to fully cooperate with the City and the federal government throughout the patent process. Consultant must transfer to the City, at no cost, the patent in any invention, improvement or discovery developed under this Agreement and any patent rights to which Consultant purchases ownership with funds provided to it under this Agreement. If, however, the federal government determines that a patent which is either developed or purchased by Consultant serves a federal government purpose, Consultant must transfer the patent to the federal government, at no cost.

2.8 Federal and City Interests in Copyright Ownership

(a) Consultant and the City intend that, to the extent permitted by law, the Deliverables to be produced by Consultant at the City's instance and expense under this Agreement are conclusively deemed "**works made for hire**" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.,* and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and

components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

(b) To the extent that any Deliverable does not qualify as a "work made for hire," Consultant hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law.

Consultant will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Consultant warrants to the City, its successors and assigns, that on the date of transfer Consultant is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Consultant further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Consultant warrants that the Deliverables are complete, entire and comprehensive within the standard of performance under Section 2.3 of this Agreement and that the Deliverables constitute a work of original authorship.

(c) Notwithstanding the terms of subsections (a) and (b) above, the federal government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes:

(i) The copyright in any Deliverable or work developed under this Agreement; and

(ii) Any rights of copyright to which Consultant or it Subcontractors purchase ownership with funds provided to it under this Agreement.

(d) The City will not reuse the Deliverables to build other projects, without the written consent of Consultant.

(e) Without limiting any of its obligations under Section 2.8 of this Agreement, Consultant must, upon request by the federal government, indemnify, save

and hold harmless the federal government and its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any Deliverables furnished under this Agreement. Consultant is not required to indemnify the federal government for any such liability arising out of the wrongful acts of employees or agents of the federal government.

2.9 Visual Artists Rights Act Waiver

Consultant waives any and all rights, in any work of visual art that may be provided pursuant to this Agreement, that may be granted or conferred under Section 106A and Section 113 of the United States Copyright Act (17 U.S.C. § 101 et seq.) (the "*Copyright Act*").

2.10 Records and Audits

(a) Records

(i) (ii Consultant must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, to the City promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. In the event of the failure by Consultant to make such delivery upon demand, then and in that event, Consultant must pay to the City any damages the City may sustain by reason of Consultant's failure.

(ii) Consultant must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement. Consultant must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 11.

(b) **Audits**

(i) Consultant and any of Consultant's Subcontractors must furnish the Department with all information that may be requested pertaining to the performance and cost of the Services. Consultant must maintain records showing actual time devoted and costs incurred. Consultant must keep books, documents, paper, records and

accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of its Services.

(ii) To the extent that Consultant conducts any business operations separate and apart from the Services required under this Agreement using, for example, personnel, equipment, supplies or facilities also used in connection with this Agreement, then Consultant must maintain and make similarly available to the City detailed records supporting Consultant's allocation to this Agreement of the costs and expenses attributable to any such shared usages.

(iii) Consultant must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

(iv) No provision in this Agreement granting the City a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents which the City would have had in the absence of such provisions.

(v) The City may in its sole discretion audit the records of Consultant or its Subcontractors, or both, at any time during the term of this Agreement or within five years after the Agreement ends, in connection with the goods, work, or services provided under this Agreement. Each calendar year or partial calendar year is considered an “audited period.” If, as a result of such an audit, it is determined that Consultant or any of its Subcontractors has overcharged the City in the audited period, the City will notify Consultant. Consultant must then promptly reimburse the City for any amounts the City has paid Consultant due to the overcharges and also some or all of the cost of the audit, as follows:

A. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Agreement prices, of the goods, work, or services provided in the audited period, then the Consultant must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;

B. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Agreement prices, of the goods, work, or services provided in the audited period, then Consultant must reimburse the City for the full cost of the audit and of each subsequent audit.

C. Failure of Consultant to reimburse the City in accordance with subsection A or B above is an event of default under this Agreement, and Consultant will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

2.11 Confidentiality

(a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Consultant under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Consultant must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Consultant by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Consultant must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.

(b) Consultant must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner.

(c) If Consultant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Consultant's possession by reason of this Agreement, Consultant must immediately give notice to the Commissioner and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Consultant, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

2.12 Assignments and Subcontracts

Consultant must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement or any part of it, unless otherwise provided for in this Agreement or without the express written consent of the Chief Procurement Officer and the Department. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Chief Procurement Officer operate to relieve Consultant of any of its obligations or liabilities under this Agreement.

All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to observe or perform the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Consultant personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Consultant of any of its obligations or liabilities under this Agreement.

Consultant, upon entering into any agreement with a Subcontractor, must furnish upon request of the Chief Procurement Officer or the Department a copy of its agreement. All subcontracts must contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department and the Chief Procurement Officer. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

Consultant must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the Chief Procurement Officer. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Consultant under this Agreement, without such prior written approval, has no effect upon the City.

Under the Municipal Code of Chicago, ch. 2-92, Section 2-92-245, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement. Any such payment has the same effect as if the City had paid Consultant that amount directly. Such payment by the City to Consultant's Subcontractor under no circumstances operates to relieve Consultant

of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

ARTICLE 3. TIME LIMITS FOR PERFORMANCE

3.1 Schedule for Performance

This Agreement takes effect as of the date of its execution by the City ("**Effective Date**"). Consultant must complete the Services as required by the schedule in Exhibit 1.

3.2 Timeliness of Performance

(a) Consultant must perform the Services as expeditiously as is consistent with professional skill and care and must provide the Services and Deliverables within the schedule required under Exhibit 1 of this Agreement.

(b) Neither Consultant nor Consultant's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Consultant by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

ARTICLE 4. COMPENSATION

4.1 Basis of Payment

The City will compensate Consultant according to the Schedule of Compensation contained in Exhibit 2 of this Agreement for the successful completion of the Services.

Notwithstanding anything in the Schedule of Compensation set forth in Exhibit 2 to the contrary, Consultant's compensation under this Agreement is limited to those amounts allowable and allocable to this Agreement under 48 C.F.R. Part 31, Subpart 31.6 (the Federal Acquisition Regulation), OMB Circular A-87 (incorporated by reference into 48 C.F.R. Part 31, Subpart 31.6), and the cost principles set forth in 48 C.F.R. Part 31, Subpart 31.2, but only to the extent that the cost principles in Subpart 31.2 do not conflict with the terms of 48 C.F.R. Part 31, Subpart 31.6 and OMB Circular A-87. To the extent that an audit reveals that Consultant has received payment in excess of such amounts, the City may offset such excess payments against any future payments due to Consultant and, if no future payments are due or if future payments are less than such excess, Consultant must promptly refund the amount of the excess payments to the City.

4.2 Method of Payment

Consultant must submit monthly invoices to the City for labor and other direct and indirect costs as billed, as outlined in the Schedule of Compensation in Exhibit 2. The invoices must be signed, dated, reference the City contract number and name, and must be in such other detail as the City requests. If Consultant has more than one agreement with the City, Consultant must prepare and submit separate invoices for each agreement. Consultant must not submit invoices for less than $500 unless a particular invoice is for last payment related to closeout of the Services.

The City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

4.3 Prompt Payment

(a) Timely Progress Payments; Return of Subcontractor Retainage

(i) Consultant must remit payment to its Subcontractors listed on a pay request to the City within 5 business days after receiving payment on the pay request from the City. Consultant must require its Subcontractors for the Services to pay their lower tier Subcontractors within 5 business days after receiving payment from Consultant, and Consultant must state these requirements in all subcontracts and purchase orders. The obligation to make prompt payment to Subcontractors is a continuing condition of Consultant's participation in the Services that are part of this Agreement, and of its Subcontractors.

(ii) Subject to the provisions of Section 4.3(b), below, Consultant must return retainage, if any, to each Subcontractor within 14 days after the Subcontractor's services have been completed or the materials delivered to the City (or off-site, if this Agreement permits payment for off-site delivery), regardless of whether the Services are finished and whether Consultant has received payment from the City for the retainage withheld.

(iii) For prompt payment, the term "Subcontractor" is intended to include suppliers. For purposes of calculating the date by which payment to Subcontractors must be made, payment is considered received 6 days after the check date. To the extent feasible, to facilitate the flow of information to Subcontractors, the City will post at the Project Manager office and maintain at the Records and Estimates Section of the Department and at the Resident Engineer's office a list of Consultant's payment requests, including the Subcontractors identified in them, submitted to the City

Comptroller for payment and the date of payments made to Consultant by the City.

(iv) If Consultant fails to incorporate these provisions in all subcontracts and purchase orders, the provisions of this Section 4.3 are deemed to be incorporated in all subcontracts and purchase orders.

(b) Timely Submittal of Pay Requests; Disputes

(i) Consultant must not delay or refuse to timely submit pay requests for a Subcontractor's services or materials, and the City may construe such delay or refusal as Consultant's failure to act in good faith. "Timely," in this context, means within 30 calendar days of the Subcontractor's services that the Subcontractor has invoiced have been completed or the materials delivered to the City (or off -site, if this Agreement permits payment for off-site delivery). In addition, Consultant must not delay or postpone payment for any undisputed portion of a Subcontractor's invoice or in connection with claims or disputes involving different pay requests for the same services or different services.

(ii) If, despite Consultant's due diligence with respect to the performance of a Subcontractor for which a pay request is submitted, new information is received, after submitting the pay request to the City, that discloses that the Subcontractor's services or materials were not in accordance with the requirements of the Agreement, or that the Subcontractor has committed fraud or is otherwise not entitled to the payment sought, Consultant may delay or postpone payment to the Subcontractor, but only if all of the following conditions are met:

A. The Subcontractor's non-complying services or materials are those that are the subject of the particular pay request; and

B. Consultant is acting in good faith and not in retaliation for a Subcontractor's exercising legal or contractual rights.

(i) When a Subcontractor has completed its services, if Consultant determines that a Subcontractor's services or materials were not in accordance with the requirements of the Agreement, or the Subcontractor has committed fraud or is otherwise not entitled to the payment sought, Consultant may delay or postpone timely return to the Subcontractor, but only if all of the following conditions are met:

A. Consultant has substantial grounds for and has acted

reasonably in its determination; and

B. Consultant is acting in good faith and not in retaliation for a Subcontractor's exercising legal or contractual rights.

(c) Special Remedies for Non-Compliance with Prompt Payment

(i) If Consultant does not pay any Subcontractor listed on a pay request or returned a Subcontractor's retainage within the time limits required under this Section 4.3 and Consultant has not met the applicable notification and consent requirements above, Consultant must pay the Subcontractor an additional 2% of the unpaid portion of any such payment each month, prorated per diem for any partial month, that Consultant fails or refuses to pay the Subcontractor, and Consultant's terms with its Subcontractors must provide for this additional payment to be made.

(ii) These provisions do not confer any rights in Subcontractors against the City. Nothing in this Section 4.3 is to be construed to limit the rights of and remedies available to the City, including but not limited to various rights under Section 9.2

(iii) If Consultant is found not to be making timely payments to its Subcontractors on a continuous basis, the City may consider this to be an event of default under the terms of this Agreement.

4.4 Criteria for Payment

The reasonableness, allocability, and allowability of any costs and expenses charged by Consultant under this Agreement will be determined by the Chief Procurement Officer and the Commissioner in their sole discretion.

In the event of a dispute between Consultant and the City as to whether any particular charge will be paid, or as to whether the amount of such charge is reasonable, allocable to the Services, or allowable, Consultant must, and the Department may, jointly or individually, refer such dispute to the Chief Procurement Officer for resolution in accordance with the Disputes section of this Agreement. The City will not withhold payment for undisputed sums on such invoice while a dispute is being resolved. All invoice disputes will be handled as described in Section B.3 of Exhibit 2.

4.5 Funding

The source of funds for payments under this Agreement is the Fund Number set forth in Exhibit 2. Payments under this Agreement will not be made or due to Consultant in excess of the dollar amount set forth in Exhibit 2 without a written

amendment in accordance with Section 10.3.

4.6 Non-Appropriation

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City will notify Consultant 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 Services completed to the date of notification will be made to Consultant except that no payments will be made or due to Consultant under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.

4.7 Subcontractor Payments

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

Once the Contractor has reported payments made to each Subcontractor, including zero dollar amount payments, the Subcontractor will receive an email and/or fax notification requesting that they log into the system and confirm payments received.
All monthly confirmations must be reported on or before the twentieth (20th) day of each month. Contractor and Subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

All contracts between the Contractor and its Subcontractors must contain language requiring the Subcontractors to respond to email and/or fax notifications from the City requiring them to report payments received from the Contractor.
Access to the Certification and Compliance Monitoring System (C2), which is a web-based reporting system, can be found at: https://chicago.mwdbe.com

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

If a Subcontractor has satisfactorily performed in accordance with the requirements of the Contract, Contractor must pay Subcontractor for such work, services, or

materials within fourteen (14) calendar days of Contractor receiving payment from the City. Failure to comply with the foregoing will be deemed an event of default.

4.8 Centralized Invoice Processing

Unless stated otherwise in the Detailed Specifications, this Contract is subject to Centralized Invoice Processing ("CIP"). Invoices must be submitted directly to the Comptroller's office by US Postal Service mail to the following address as appropriate:

Invoices for any City department other than the Department of Aviation:

Invoices
City of Chicago, Office of the City Comptroller
33 N. LaSalle St., Room 700
Chicago, IL 60602

Invoices for the Department of Aviation:

Chicago Department of Aviation
10510 W. Zemke Blvd.
P.O. Box 66142
Chicago, IL 60666
Attn: Finance Department

OR

Invoices for any department, including Aviation, may be submitted via email to: invoices@cityofchicago.org with the word "INVOICE" in the subject line.

All invoices must be signed, marked "original," and include the following information or payment will be delayed:

- Invoice number and date
- Contract/Purchase Order number
- Blanket Release number (if applicable)
- Vendor name and/or number
- Remittance address
- Name of City Department that ordered the goods or services
- Name and phone number of your contact at the ordering department
- Invoice quantities, commodity codes, description of deliverable(s)
- Amount due
- Receipt number (provided by the ordering department after delivery of goods/services)

Invoice quantities, service description, unit of measure, pricing and/or catalog information must correspond to the terms of the Bid Page(s).

If applicable, if invoicing Price List/Catalog items, indicate Price List/Catalog number, item number, Price List/Catalog date, and Price List/Catalog page number on the invoice.

Invoices for over-shipments or items with price/wage escalations will be rejected unless the Contract includes a provision for such an adjustment.
Freight, handling and shipping costs are not to be invoiced; deliveries are to be made F.O.B., City of Chicago. The City of Chicago is exempt from paying State of Illinois sales tax and Federal excise taxes on purchases.

4.9 Payment

The City will process payment within sixty (60) calendar days after receipt of invoices and all supporting documentation necessary for the City to verify the satisfactory delivery of work, services or goods to be provided under this Contract.

Contractor may be paid, at the City's option, by electronic payment method. If the City elects to make payment through this method, it will so notify the Contractor, and Contractor agrees to cooperate to facilitate such payments by executing the City's electronic funds transfer form, available for download from the City's website at: http://www.cityofchicago.org/content/dam/city/depts/fin/supp_info/DirectDepositCityVendor.pdf. The City reserves the right to offset mistaken or wrong payments against future payments.

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

ARTICLE 5. DISPUTES

Except as otherwise provided in this Agreement, Consultant must and the Commissioner may bring any dispute concerning a question of fact arising under this Agreement which is not disposed of to the Chief Procurement Officer for decision based upon written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room.) The Chief Procurement Officer will reduce his decision to writing and mail or otherwise furnish a copy of it to Consultant. The decision of the Chief Procurement Officer is final and binding. If Consultant does not agree with the decision of the Chief Procurement Officer, the sole and exclusive remedy is judicial review by a common law writ of

certiorari.

ARTICLE 6. COMPLIANCE WITH ALL LAWS

6.1 Compliance with All Laws Generally

(a) Consultant 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 Article 6, and Consultant must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Consultant must require all Subcontractors to do so, also. Consultant must have filed, within 1 year prior to the Effective Date, an executed Economic Disclosure Statement and Affidavit ("Disclosure Affidavit") with the Chief Procurement Officer and must execute a No Changes Affidavit and a Disclosure of Retained Parties in the forms incorporated into this Agreement as Exhibit 4. Notwithstanding acceptance by the City of the Disclosure Affidavit, failure of the Disclosure Affidavit to include all information required under the Municipal Code renders this Agreement voidable at the option of the City.

(b) 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.

6.2 Nondiscrimination

(a) Consultant

In performing its Services under this Agreement, Consultant must comply with applicable laws prohibiting discrimination against individuals and groups.

(i) Federal Requirements

In performing its Services under this Agreement, Consultant 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 Consultant’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.

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant 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); Drug Abuse Office and Treatment Act of 1972, P.L. 92-255, as amended; and Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, P.L. 91-616, as amended; and all other applicable federal statutes, regulations and other laws.

(ii) State Requirements

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant 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 Ill. Admin. Code § 750 Appendix A. Furthermore, Consultant 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.

(iii) City Requirements

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant 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, Consultant 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.

(b) Subcontractors

Consultant must incorporate this Section 6.2 by reference in all agreements entered into with Subcontractors and labor organizations that furnish skilled, unskilled and craft union skilled labor, or any other services in connection with this Agreement.

6.3 Compliance with the Americans with Disabilities Act and Other Laws Concerning Accessibility

Consultant covenants that all designs, plans and drawings produced or utilized under this Agreement will address and comply with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities or environmentally limited persons including the following: the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG"); the Architectural Barriers Act, Pub. L. 90-480 (1968), and the Uniform Federal Accessibility Standards ("UFAS"); and the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.*, and all regulations promulgated thereunder , *see* Illinois Administrative Code, Title 71, Chapter 1, Section 400.110.

If the above standards are inconsistent, Consultant must assure that its designs, plans, and drawings comply with the standard providing the greatest accessibility. Also, Consultant must, prior to construction, review the plans and specifications to insure compliance with these standards. If Consultant fails to comply with the foregoing standards, the City may, without limiting any of its remedies set forth in Section 9.2 or otherwise available at law, in equity or by statute, require Consultant to perform again, at no expense, all Services required to be reperformed as a direct or indirect result of such failure.

6.4 Subcontractors 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.

6.5 Inspector General

It is the duty of any bidder, proposer 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, Consultant, Subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code of Chicago. Consultant 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.

6.6 Business Relationships with Elected Officials

Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement. The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code of Chicago.

Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of $2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" shall not include any employment relationship of an official’s spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

6.7 Prohibition on Certain Contributions - Mayoral Executive Order No. 05-1

Contractor agrees that Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Contractor’s

Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this bid, proposal or Agreement by Contractor, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Contractor and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

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

Contractor agrees that it 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.

Contractor agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

Contractor agrees that a 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. 05-1 constitutes a breach and default under this Agreement, 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 Agreement, 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. 11-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Contractor's bid.

For purposes of this provision:
"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Contractor is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council. "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.
Individuals are "Domestic Partners" if they satisfy the following criteria:

(A) they are each other's sole domestic partner, responsible for each other's common welfare; and
(B) neither party is married; and
(C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
(D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
(E) two of the following four conditions exist for the partners:
    1. The partners have been residing together for at least 12 months.
    2. The partners have common or joint ownership of a residence.
    3. The partners have at least two of the following arrangements:
        a. joint ownership of a motor vehicle;
        b. a joint credit account;
        c. a joint checking account;
        d. a lease for a residence identifying both domestic partners as tenants.
    4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

6.8 Chicago "Living Wage" Ordinance

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

(i) If Consultant has 25 or more full-time employees, and

(ii) If at any time during the performance of this Agreement, Consultant and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more

full-time security guards, or any number of other full-time Covered Employees, then

(iii) Consultant must pay its Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "Base Wage") for all Services performed under this Agreement.

(b) Consultant's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.

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

(d) Consultant must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Consultant agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Consultant or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Consultant and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

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

6.9 Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

ARTICLE 7. SPECIAL CONDITIONS

7.1 Warranties and Representations

In connection with signing and carrying out this Agreement, Consultant:

(a) warrants that Consultant is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Consultant is not appropriately licensed;

(b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors are competent to perform the Services required under this Agreement; and Consultant is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;

(c) warrants that it will not knowingly use the services of any ineligible consultant or Subcontractor for any purpose in the performance of its Services under this Agreement;

(d) warrants that Consultant is not in default at the time this Agreement is signed, and has not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City of Chicago, and has obtained warranties from its Subcontractors substantially similar in form and substance;

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

7-28-390 Dumping on public way;
7-28-440 Dumping on real estate without permit;
11-4-1410 Disposal in waters prohibited;
11-4-1420 Ballast tank, bilge tank or other discharge;
11-4-1450 Gas manufacturing residue;

11-4-1500 Treatment and disposal of solid or liquid waste;
11-4-1530 Compliance with rules and regulations required;
11-4-1550 Operational requirements; and
11-4-1560 Screening requirements.

During the period while this Contract is executory, Contractor's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Contract, constitutes a breach of and an event of default under this Contract, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Contract, at law or in equity. This section does not limit the Contractor's and its Subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Contract. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Contract, and may further affect the Contractor's eligibility for future contract awards.

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

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

(g) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Consultant warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;

(h) represents that Consultant 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

(i) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 8.1 and 8.3 of this Agreement.

7.2 Ethics

(a) In addition to the foregoing warranties and representations, Consultant warrants:

(i) no officer, agent or employee of the City is employed by Consultant 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 prime Consultant or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(b) Consultant 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.

7.3 Joint and Several Liability

If Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Consultant is the joint and several obligation or undertaking of each such individual or other legal entity.

7.4 Business Documents

At the request of the City, Consultant must provide copies of its latest articles of

incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

7.5 Conflicts of Interest

(a) 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.

(b) Consultant covenants that it, and to the best of its knowledge, its Subcontractors if any (collectively, "Consulting Parties"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the City, Consultant must disclose to the City its past client list and the names of any clients with whom it has an ongoing relationship. Consultant is not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Consultant’s past or present clients. If Consultant becomes aware of a conflict, it must immediately stop work on the assignment causing the conflict and notify the City.

(d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) Consultant further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Services or have access to any confidential information, as defined in Section 2.11 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Consultant's Services for others conflict with the Services Consultant is to render for the City under

this Agreement, Consultant must terminate such other services immediately upon request of the City.

7.6 Non-Liability of Public Officials

Consultant and any assignee or Subcontractor of Consultant must not charge any official, employee or agent of the City or the federal government personally with any liability or expenses of defense or hold any official, employee or agent of the City or the federal government personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

ARTICLE 8. SPECIAL CONDITIONS FOR FHWA AND FTA AGREEMENTS

8.1 Interest of Members of or Delegates to the United States Congress

In accordance with 41 U.S.C. § 22 Consultant must not admit any member of or delegate to the United States Congress to any share or part of this Agreement or to any benefit derived from it.

8.2 False or Fraudulent Statements and Claims

(a) Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U .S.C. §§ 3801 et seq and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Accordingly, Consultant, by signing this Agreement, certifies or affirms the truthfulness and accuracy of any statement it has made, it presently makes, or it may make pertaining to this Agreement, including without limitation any invoice for its Services. In addition to other penalties that may be applicable, Consultant also acknowledges that if it makes a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on Consultant to the extent the federal government (the "Government") considers appropriate.

8.3 Environmental Laws and Regulations

Consultant recognizes that many federal, state and City laws imposing environmental and resource conservation requirements may apply to this Agreement. Some, but not all, of the major laws that may affect the Agreement include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the
Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901et seq.; and the Comprehensive Environmental Response, Compensation, and Liability

Act, as amended, 42 U.S.C. §§ 9601 et seq. Consultant also recognizes that U.S. Environmental Protection Agency, U.S. Department of Transportation, the Illinois Environmental Protection Agency, the City and other government agencies have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect this Agreement. Thus, Consultant must adhere to, and impose on its Subcontractors, any such requirements as the federal, state and City governments may now or in the future promulgate. Requirements of particular concern are listed below. Consultant acknowledges that this list does not constitute Consultant's entire obligation to meet all government environmental and resource conservation requirements. Consultant must
include these provisions in all subcontracts.

1. **Environmental Protection**

Consultant must comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. in accordance with Executive Order No.12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; United States Department of Transportation statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and United States Department of Transportation regulations, "Environmental Impact and Related Procedures," 23 C.F .R. Part 771 and 49 C.F .R. Part 622.

2. **Air Quality**

Consultant must comply with all applicable standards, orders, and regulations issued under the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Specifically, Consultant must comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. Consultant must report and require each Subcontractor to report any violation of these requirements resulting from any activity related to the implementation of this Agreement to the City and the appropriate U.S. EPA Regional Office.

3. **Clean Water**

Consultant must comply with all applicable standards, orders, or regulations issued under the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Consultant must report and require

each Subcontractor to report any violation of these requirements resulting from any activity related to the implementation of this Agreement to the City and the appropriate U.S. EPA Regional Office.

4. **List of Violating Facilities**

Consultant must not use any facility in the performance of this Agreement or benefit any facility through its performance of this Agreement that is listed on the U.S. EPA List of Violating Facilities ("**List**"), and Consultant must promptly notify the City if Consultant receives any communication from the U.S. EPA that such a facility is under consideration for inclusion on the List.

5. Energy Policy and Conservation Act

To the extent applicable, Consultant must comply with the mandatory standards and policies relating to energy efficiency which are contained in the State of Illinois energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163,89 Stat. 871.

8.4 Anti-Lobbying and Debarment

By its execution of Exhibit 4 Consultant certifies that it is in compliance with federal restrictions on lobbying and that neither it nor, if a joint venture, any of its joint venture members or their principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Consultant further agrees that it will include this clause and the certification without modification in all solicitations and subcontracts. If Consultant or any Subcontractor is unable to certify to this clause, it must provide a written explanation of its inability.

8.5 No Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by federal law, Consultant must comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any funds received under this Agreement to support subcontracts procured using exclusionary or discriminatory specifications.

8.6 Preference for Recycled Products

To the extent practicable and economically feasible and to the extent that it does not reduce or impair the quality of the Services, Consultant will use recycled products in performance of this Agreement pursuant to U.S. Environment Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, which implement Section 6002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, as amended.

8.7 Cargo Preference-Use of United States Flag Vessels

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

8.8 Buy America

To the extent applicable, Consultant must comply with 49 U.S.C. § 5323(j), and related regulations at 49 C.F.R. Part 661, and include clauses requiring its Subcontractors to comply with the requirements of 49 U.S.C. § 5323(j), and related regulations at 49 C.F.R. Part 661, in all of Consultant's subcontracts with its Subcontractors.

8.9 Fly America

Consultant must comply with 49 U.S.C. § 40118, and related regulations at 41 C.F.R. Part 301-10, regarding use of United States air carriers, and include clauses requiring its Subcontractors to comply with the requirements of 49 U.S.C. § 40118, and related regulations at 41 C.F.R. Part 301-10, in all of Consultant's subcontracts with its Subcontractors.

8.10 No Federal Government Obligations to Third Parties

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

8.11 Contract Work Hours and Safety Standards Act

Consultant must comply, and must cause its Subcontractors to comply, with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 *et seq.,* to the extent applicable. In accordance with the Contract Work Hours and Safety Standards Act, Consultant agrees that, if applicable, the wages of every laborer and mechanic employed by Consultant or its Subcontractors during the performance of this Agreement will be computed on the basis of a standard work week of 40 hours, and that each laborer and mechanic will be compensated for work exceeding the standard work week at a rate of not less than

1.5 times the basic rate of pay for all hours worked in excess of 40 hours in a work week. Conusultants knowledge Department that determinations pertaining to these requirements will be made in accordance with applicable U.S. of Labor regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

ARTICLE 9. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET

9.1 Events of Default Defined

The following constitute events of default:

1. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Consultant to the City.

2. Consultant's material failure to perform any of its obligations under this Agreement including the following:

    a. Failure due to a reason or circumstances within Consultant's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;

    b. Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or the Chief Procurement Officer or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

    c. Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;

    d. Discontinuance of the Services for reasons within Consultant's reasonable control; and

    e. Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination.

3. Any change in ownership or control of Consultant without the prior written approval of the Chief Procurement Officer, which approval the Chief Procurement Officer will not unreasonably withhold.

4. Consultant's default under any other agreement it may presently have or may enter into with the City during the life of this Agreement. Consultant

acknowledges and agrees that in the event of a default under this Agreement the City may also declare a default under any such other agreements.

5. Failure to comply with Section 6.1 in the performance of the Agreement.

6. Consultant's repeated or continued violations of City ordinances unrelated to performance under the Agreement that in the opinion of the Chief Procurement Officer indicate a willful or reckless disregard for City laws and regulations.

9.2 Remedies

The occurrence of any event of default permits the City, at the City's sole option, to declare Consultant in default. The Chief Procurement Officer may in his sole discretion give Consultant an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days, unless extended by the Chief Procurement Officer. Whether to declare Consultant in default is within the sole discretion of the Chief Procurement Officer and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement.

The Chief Procurement Officer will give Consultant written notice of the default, either in the form of a cure notice ("**Cure Notice**"), or, if no opportunity to cure will be granted, a default notice ("**Default Notice**"). If the Chief Procurement Officer gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate (but not the decision not to terminate) is final and effective upon giving the notice. The Chief Procurement Officer may give a Default Notice if Consultant fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 9.2 and Article 11, Consultant must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City. After giving a Default Notice, the City may invoke any or all of the following remedies, individually or collectively:

The right to take over and complete the Services, or any part of them, at Consultant's expense and as agent for Consultant, either directly or through others, and bill Consultant for the cost of the Services, and Consultant must pay the difference between the total amount of this bill and the amount the City would have paid Consultant under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for Consultant under this Section 9.2;

1. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;

2. The right of specific performance, an injunction or any other appropriate

equitable remedy;

3. The right to money damages;

4. The right to withhold all or any part of Consultant's compensation under this Agreement;

5. The right to deem Consultant non-responsible in future contracts to be awarded by the City.

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

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

9.3 Early Termination

In addition to termination under Sections 9.1 and 9.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Consultant. The City will give notice to Consultant in accordance with the provisions of Article 11. The effective date of termination will be the date the notice is received by Consultant or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 10 days after the date the notice is considered received as provided under Article 11 of this Agreement (if no date is given) or upon the effective date stated in the notice.

After the notice is received, Consultant must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 4, but if any compensation is described or provided for on the basis of a period longer than

10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Consultant must attempt to agree on the amount of compensation to be paid to Consultant, but if not agreed on, the dispute must be settled in accordance with Article 5 of this Agreement. The payment so made to Consultant is in full settlement for all Services satisfactorily performed under this Agreement.

Consultant must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Consultant will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against Consultant or the City to the extent inconsistent with this provision.

If the City's election to terminate this Agreement for default under Sections 9.1 and 8.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9.3.

9.4 Suspension

The City may at any time request that Consultant suspend its Services, or any part of them, by giving 15 days prior written notice to Consultant or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Consultant must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Chief Procurement Officer and such equitable extension of time as may be mutually agreed upon by the Chief Procurement Officer and Consultant when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Consultant as a result of recommencing the Services must be treated in accordance with the compensation provisions under Exhibit 2 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Consultant by written notice to the City may treat the suspension as an early termination of this Agreement under Section 9.3.

9.5 Right to Offset

A. In connection with performance under this Agreement:

The City may offset any excess costs incurred:

a. if the City terminates this Agreement for default or any other reason

resulting from Consultant's performance or non-performance;

b. if the City exercises any of its remedies under Section 9.2 of this Agreement; or

c. if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these excess costs by use of any payment due for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those excess costs, Consultant is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

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

(i) 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 Consultant to the City. For purposes of this Section 9.5 "**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.

(ii) Notwithstanding the provisions of the above subsection, 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:

A. Consultant 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 Consultant is in compliance with the agreement; or

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

C. Consultant has filed a petition in bankruptcy and the debts owed the City are dischargeable in bankruptcy.

In connection with any liquidated or unliquidated claims against Consultant:

Without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against Consultant unrelated to this Agreement. When the City's claims against Consultant are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse Consultant to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

ARTICLE 10. GENERAL CONDITIONS

10.1 Entire Agreement

1. General

This Agreement, and the exhibits, which are attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

2. No Collateral Agreements

Consultant acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Consultant to enter into this Agreement or has been relied upon by Consultant, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi)

any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those

employed or connected or concerned with it.

3. No Omissions

Consultant acknowledges that Consultant was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Consultant did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Consultant relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

10.2 Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

10.3 Amendments

No changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Consultant and by the Mayor, Comptroller, and Chief Procurement Officer of the City or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 10.3.

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

10.4 Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.
Consultant 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 Consultant 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 Consultant, or by personal delivery on any officer, director, or managing or general agent of Consultant. If any action is brought by Consultant against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

10.5 Severability

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

10.6 Assigns

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

10.7 Cooperation

Consultant must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Consultant must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

10.8 Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Consultant's performance in any respect or waives a requirement or condition to either the City's

or Consultant's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition.

No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Consultant in writing.

10.9 Independent Contractor

A. This Agreement is not intended to and will 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 Consultant and the City. The rights and the obligations of the parties are only those set forth in this Agreement. Consultant 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 Consultant is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

1. 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 Consultant performing the Services required under this Agreement.

2. Consultant is not entitled to membership in the City of Chicago 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 of Chicago.

3. The City of Chicago is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Consultant.

C. Shakman

(i) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "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 Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Consultant is aware that City policy prohibits City employees from directing any individual to apply for a position with Consultant, either as an employee or as a subcontractor, and from directing Consultant to hire an individual as an employee or as a subcontractor. Accordingly, Consultant must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Consultant under this Agreement are employees or subcontractors of Consultant, 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 Consultant.

(iii) Consultant 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.

(iv) In the event of any communication to Consultant by a City employee or City official in violation of Section 9.10(c)(ii) above, or advocating a violation of Section 9.10(c)(iii) above, Consultant 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. Consultant will also cooperate with inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the contract.

10.10 Electronic Ordering and Invoices

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

ARTICLE 11. NOTICES

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

If to the City:
City of Chicago Department of Transportation
30 North LaSalle Room 1100
Chicago, Illinois
Attention: Commissioner

and

Department of Procurement Services
Room 403, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Chief Procurement Officer

With Copies to:
Department of Law
Room 600, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

If to Consultant: To the address set forth in the preamble of this Agreement

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 11. Notices delivered by mail are considered received three days after mailing in accordance with this Article 11. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 12. AUTHORITY

Execution of this Agreement by Consultant is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Consultant have been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

ARTICLE 13. DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

1. **Nondiscrimination.** Consultant or its Subcontractors must not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. Consultant must carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate. Consultant must include the provision set forth in this paragraph in all of its subcontracts.

2. **DBE Financial Institutions.** Consultant is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of Consultant's willingness to do business with DBEs. Information about such institutions is available in the City of Chicago's DBE Program document, which is available on-line at www.cityofchicago.org/procurement; a hard copy of the DBE Program document is available at the City of Chicago, Department of Procurement Services, City Hall, 121 N. LaSalle Street, Room 403, Chicago, IL 60602.

3. In the performance of this Agreement, including the procurement and lease of materials or equipment, Consultant must abide by the requirements of 49 C.F.R., Part 26, the Disadvantaged Business Enterprise Commitment requirements of the City of Chicago Municipal Code, Ch-2-92, Section 2-92-420 et seq. (1990), except to the extent waived by the Chief Procurement Officer, Consultant must

comply with the "Special Conditions Regarding Disadvantaged Business Enterprise Commitment," set forth in Exhibit 3, and 10 incorporated by reference here. Subconsultant's completed C-1 and Consultant's completed D-1 evidencing compliance are included in Exhibit 3 and will become binding upon Consultant upon acceptance by the Chief Procurement Officer. Consultant must utilize Disadvantaged Business Enterprise at the greater of the amounts listed in the aforementioned Schedule C-1 and D-1 or the amounts determined by applying the percentages listed there to all payments received from the City under this Agreement.

[Signature Page to follow]

CONTRACT SIGNATURE PAGE

Contract Number _____

Specification Number _____

Vendor Name: _____

Total Amount (Value): _____

Fund Chargeable: _____

_____
(Vendor)

By:_____
Its:_____

Attest:_____

State of _____
County of _____

This instrument was acknowledged before me on this _____ day of _____, 20___ by _____ as President (or other authorized officer) and _____ as Secretary of _____ (Corporation Name).
(Seal)

_____
Notary Public Signature
Commission Expires: _____

CITY OF CHICAGO

_____
Mayor Date

_____
Comptroller Date

_____
Chief Procurement Officer Date

EXHIBIT 1

Scope of Services and Schedule for Performance

EXHIBIT 2

Schedule of Compensation

EXHIBIT 3

DBE Special Conditions
DBE C-1 & D-1

EXHIBIT 4

Online Economic Disclosure Statement (OLEDS)

https://webapps.cityofchicago.org/EDSWeb/appmanager/OnlineEDS/desktop