

**BOOK 1
TERMS AND CONDITIONS FOR CONSTRUCTION**

**CITY OF CHICAGO
DEPARTMENT OF WATER MANAGEMENT**



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MAYOR**

Issued by the
DEPARTMENT OF PROCUREMENT SERVICES

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CHIEF PROCUREMENT OFFICER**

City Funding

January 12, 2006
(The City may from time to time revise these terms and conditions)

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I. GENERAL PROVISIONS

A. Acronyms

“ACI” - American Concrete Institute

“AED” - Associated Equipment Distributors

“ASTM” - American Society for Testing and Materials

“CPM” - Critical Path Method (*See, XI “Schedule,” and also Section XI.B.2.*)

“CTA” - Chicago Transit Authority

“EDS” - See Section XXII.H.

“IDOT” - Illinois Department of Transportation.

“NFPA” - National Fire Protection Association

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

“SSRBC” - IDOT Standard Specifications For Road and Bridge Construction issued by IDOT, as amended from time to time.

See:
<http://www.dot.state.il.us/desenv/hwyspecs.html>.

B. Definitions

1. “Acceptance” means that all of the following events have occurred:
 - a. the Commissioner has determined that the Work is Substantially Complete and all Punch List Work and any other remaining Work have been completed in accordance with the Contract documents;
 - b. final inspections have been completed and operations systems and equipment testing have been completed;
 - c. final occupancy certifications have been issued; and
 - d. all Record Documents have been provided to the Commissioner.
2. “Addenda” means written or graphic instruments issued prior to the opening of bids, which clarify, modify or interpret the Contract Documents.
3. “Architect/Engineer” means the person designated by the Commissioner to provide the Contract drawings and Detailed Specifications for the Work you are to perform.
4. “Business day” means Monday through Friday, unless an officially designated City holiday falls on one of those days. By contrast, see “Day”.
5. “Chief Procurement Officer” means the Chief Procurement Officer for the City and any representative duly authorized in writing to act on his/her behalf.
6. “City” means the City of Chicago.
7. “City Forester” means the Commissioner of the Department of Streets and Sanitation or his designated representative.
8. “Commissioner” means the head of the Department and any representative duly authorized in writing to act on his behalf.
9. “Comptroller” means City Comptroller or his designated representative.

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10. "Construction Manager" means the person designated by the Commissioner to oversee construction of the Project.
11. "Consultant(s)" refers to the person, firm or corporation awarded a contract by the City to provide professional architectural or engineering design services or construction supervision for the Project.
12. "Contract" means this Contract, including your bid proposal (as accepted by the City), the City's bid specification, which includes Books 1, 2, and 3, plans and drawings, addenda, all exhibits and schedules that are attached to it and documents incorporated in it by reference; fully executed performance and payment bond(s); and all amendments, modifications, or revisions made from time to time in accordance with its terms.
13. "Contract Modification" means a written modification of the terms and conditions of this Contract, signed by you, the Chief Procurement Officer, the Mayor, and the Comptroller.
14. "Contract Price" is defined in Section XIII.A.
15. "Contract Time" is the duration of the Work from when the Work is required to begin until the scheduled date for Substantial Completion, including approved time extensions. See I.B.47.
16. "Contractor" or "you" means the entity that is awarded this Contract.
17. "Corporation Counsel" means the head of the City's Department of Law and any Assistant Corporation Counsel duly authorized to act on the Corporation Counsel's behalf.
18. "Day" means calendar day, unless otherwise stated. By contrast, see "Business Day," I.B.4.
19. "Department" means the City Department identified on the cover of this Book 1 of this Contract.
20. "Detailed Specifications" means the written requirements for materials and equipment to be used in the Work, including any plans or drawings and standards of performance for the Work, which are set forth in Book 3 or incorporated in it by reference.
21. "Engineer" means the Commissioner of the Department or any other person designated by him. See also, I.B.8.
22. "Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
23. "Equipment" means all machinery and equipment, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper and acceptable completion of the Work.

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24. "Final Completion" means all of the following events have occurred:
- a. Substantial Completion;
 - b. Acceptance of the Work;
 - c. all deliverables have been provided to the Commissioner; and
 - d. all contractual requirements for final payment have been completed.
25. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls, oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 USC Sec. 2014, *et seq.*), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7 USC Sec. 136, *et seq.*) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," or "toxic substance" (or comparable term) in any Environmental Law.
26. "Include" (in all of its forms) means "include without limitation" unless the context clearly indicates otherwise.
27. "Management Consultant" or "Program Manager" means the organization or entity, if any, that the City has retained to oversee the planning, design, and construction of the Project.
28. "Municipal Code" means the Municipal Code.
29. "Notice to Bidders" means Advertisement for Bids, the official notice inviting bids for the proposed Work to be done under this Contract.
30. "Night Work" means work performed between the hours of 9:00 p.m. and 8:00 a.m. unless otherwise defined in the plans.
31. "Notice to Proceed" means written authorization from the Commissioner for you to begin the Work on a specified date.
32. "Product Data" are illustrations, standard schedules, performance charts, instructions, descriptive literature, catalogs and brochures, performance and test data, test certifications, diagrams and other information that you furnish to illustrate a material, product, or system, for some portion of the Work.
33. "Project" means, collectively, the improvements you will be constructing in accordance with the Contract.
34. "Proposed Contract Modification" means the written order to you, signed by the Commissioner, unilaterally directing changes in the Work or the Contract Time, or directing you to take corrective action and to adhere to Contract documents.
35. "Record Documents" means all documents pertaining to the completed Work and Project that the Contract requires you to provide to the City, including Record Drawings, record Shop Drawings, Product Data, warranties, instructions, parts list, certified payrolls, operations and maintenance manuals (and photographs and video tape if specified in the Contract).

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36. "Record Drawings" means drawings reflecting the final built Project configuration, including approved modifications.
37. "Provide" means furnish and install, unless otherwise specified in this Contract.
38. "Punch List" or "Punch List work" means minor adjustment, repairs or deficiencies in the Work, as determined by the Commissioner, in his sole discretion.
39. "Samples" mean physical examples that illustrate materials, equipment or workmanship. Samples include materials, fabricated items, equipment, devices appliances, or parts of them as called for in the Detailed Specifications, and any other Samples that may be required by the Commissioner to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials you propose conform to the required characteristics.
40. "Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the Work by you or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings include: fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and systems and methods of construction as may be required to show that the materials, equipment or system conform to the Contract requirements.
41. "Special Wastes" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in § 809.103 of 35 Illinois Administrative Code, Subtitle G, Ch. 1.
42. "Standard Specifications" means the SSRBC. See Sections I.A, IV.2.
43. "State" means the State of Illinois.
44. "Subcontractor" means any person or entity with whom you contract to provide any part of the Work, and all subcontractors of any tier, including suppliers and material persons, whether or not in privity with you. See Section XIII.G.1.F (1) for "Field Labor Subcontractor" and Section XIII.G.1.F (2), for "Materials Subcontractor."
45. "Submittals" means Schedule, Shop Drawings, Product Data or Samples and other items as may be required by the Contract.
46. "Substantial Completion Date" is the date, determined by the Commissioner, on which the Project is to reach Substantial Completion. The Substantial Completion Date will be determined based on the duration for the Project set by the Contract as adjusted by any Contract Modifications that extend or reduce the duration of the Project.
47. "Substantial Completion of the Project" or "Substantial Completion" means that, in the opinion of the Commissioner, you have completed all Work in accordance with the Contract, except for Punch List work, and the City is able to occupy and use the Project for the purpose intended.
48. "Work" means all labor, materials, equipment, deliverables, and other incidentals you are to provide under this Contract that are necessary or convenient to the successful completion of this Project and that are required by, incidental or collateral to the Contract.

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49. "You," in all of its forms, means the Contractor.

C. Usage and Contract Interpretation

1. Unless a contrary meaning is specifically noted elsewhere, words such as, "as required," "as directed," "as permitted," and similar words mean that requirements, directions of, and permission of the Commissioner are intended. The words "approved," "acceptable," "satisfactory," or words of like import, mean "approved by," "acceptable to," or "satisfactory to" the Commissioner. The words "necessary," "proper," or words of like import as used regarding the extent, conduct or character of the Work specified means that Work must be conducted in a manner, to the extent, or be of character that is "necessary" or "proper" in the opinion of the Commissioner. The Commissioner's judgment in these matters is final and you are not permitted to contest it.
2. Where the imperative form of an address is used, such as "perform the excavating," "provide equipment required," "remove obstructions encountered," "furnish and install reinforcing steel bars," etc., that address is directed to you .
3. Any headings in this Contract are for convenience of reference only and do not define or limit its terms or provisions. All article and section references, unless otherwise expressly indicated, are to sections of this Contract. Words importing persons include firms, associations, partnerships, trusts, corporations, joint ventures and other legal entities, including public bodies, as well as natural persons. Words of any gender include correlative words of other genders. Words importing the singular number include the plural and vice versa, unless the context otherwise indicates. All references to any exhibit or document include the latest version and all supplements and/or amendments to any such exhibits or documents. All references to any person or entity include any person or entity succeeding to the rights, duties, and obligations of those persons or entities in accordance with the terms and conditions of this Contract.
4. Whenever reference to a law is contained in this Contract, the reference includes any amendments to the law.

D. Severability

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

E. Estimates of Quantities

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

1. the estimate is approximate only;

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

F. Order of Precedence of Component Contract Parts

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

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

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

G. Source of Funding - CDBG

If any of the funding identified in Book 2 of this Contract is federal Community Development Block Grant money, then the provisions of the SPECIAL CONDITIONS FOR CONTRACTS FUNDED WITH COMMUNITY DEVELOPMENT BLOCK GRANTS (CDBG) and the City's SECTION 3 COMPLIANCE PLAN apply to this Contract. If they apply, both are considered part of these Book 1 Terms and Conditions in the order of precedence, although they are located in Book 2.

H. Entire Agreement

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

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II. PROJECT ORGANIZATION

A. The Commissioner

For the purposes of this Contract, the Commissioner, or any successor office to the Commissioner, will represent the City in all matters relating to the performance of your Work under this Contract and will constitute the point of receipt for all deliverables required under this Contract, unless expressly specified otherwise in this Contract. The Commissioner will decide all questions that arise with regard to the administration of the Contract such as to the quality and acceptability of materials furnished, the Work performed and rate of progress of the Work. The Commissioner will determine the amount and quality of Work performed and materials furnished and their estimates. The Commissioner's estimate will be a condition precedent to your right to receive money due under the Contract, but then only if the modifications or amendments to the Contract are approved in accordance with Article XIV, "Changes in the Work," of the Contract. The Commissioner designates the Architect/Engineer who will provide the Contract drawings and Detailed Specifications for the Work you are to perform. You will not have direct contact with the Architect/Engineer.

B. The Chief Procurement Officer

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

C. Contractor

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

III. CONTRACTOR'S OBLIGATIONS

A. Contractor

1. Except as may be expressly provided otherwise in the Contract, you are solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work. The intent of the Detailed Specifications is to describe the completed Work that you must provide to fulfill the requirements of the Contract. The Detailed Specifications are not intended to cover every detail of materials, parts, or activities necessary to complete the Work. You must perform all activities that may be required or necessary to complete the Work in accordance with the Contract. For the Contract Price, you must construct, furnish and install all materials, parts and labor necessary to complete the entire Work, whether or not the Contract particularly specifies or shows the details of Work.
2. The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. You are responsible for all segregation of Work between the trade or craft jurisdictional limits. You must make all necessary arrangements to reconcile any jurisdictional conflicts without delay, damage, or cost to the City.

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3. Before submission of your bid, you must (i) inspect the site of the proposed Work and familiarize yourself with all the site conditions that may affect your performance of the Work; and (ii) review the Detailed Specifications, plans and drawings provided with the bid documents. If at any time before the bid opening you discover any errors, discrepancies or omissions in the Contract or any discrepancy between the Contract and the physical conditions at the site or in any drawings that may be provided later, you must notify the Chief Procurement Officer immediately, in writing for an interpretation through an Addendum.
4. This written request must be received by the Chief Procurement Officer no later than 10 days before bid opening, or no response will be provided. You will not be allowed to take advantage for your discovery of any such error or omission or discrepancy in the Contract after the award of the Contract. Any Work done after the discovery, unless authorized by the Chief Procurement Officer, will be done at your expense.
5. Except as otherwise expressly provided in the Contract, the Contract Price includes all costs and expenses for which you will be compensated in connection with the Contract, including
 - a. the costs of performing any or all of your obligations and duties under the Contract;
 - b. the costs of all materials, equipment, supplies, tools, machinery, labor, supervision, management and items of any and all kinds that are or may be necessary and incidental to the full and satisfactory completion of the Work, whether or not specified or indicated in the Contract;
 - c. the costs of permits, insurance, bonds and license;
 - d. the costs associated with any risks you assume under the Contract;
 - e. the costs associated with all warranties and guarantees;
 - f. the costs of complying with the directives of the Chief Procurement Officer and/or the Commissioner;
 - g. the costs of complying with all laws applicable to the Contract; and
 - h. all overhead and profit.

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

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

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

7. You must supervise and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. You are responsible for providing a finished Project that complies fully with the Contract.
8. Risk of Loss. The Work is under your charge and care until Final Completion and Acceptance of the Work by the Commissioner, unless otherwise specified in the Contract. You assume all responsibility for injury or damage to the Work by action of the elements, fire or any other causes whatsoever, including injury or damage arising from the execution or non-execution of the Work. You must rebuild, repair, restore and make good, at no additional cost to the City, all injuries or damages to any portion of your Work before Final Completion and Acceptance of the Work.
9. When the City furnishes equipment or materials to you for use or inclusion in the Work, you must safeguard all such equipment and materials as you would equipment and materials that you furnished.
10. The Work will not be considered to be completed and accepted until you receive written notice from the Commissioner confirming the Final Completion and Acceptance of the Work.
11. If you have any questions or concerns with respect to the Detailed Specifications or Contract drawings, you must raise them with the Construction Manager.
12. Except as specified below, you must perform with your own organization and forces not less than 50% of the total amount of Work that is performed at the Project site, computed on the basis of cost. You must require each Subcontractor to become familiar with all provisions of the Contract documents that may affect Subcontractor's work.

B. Subcontractors

1. All rights and obligations under this Contract are by and between the City and you. Except as may otherwise be provided in the Contract, there is no privity between Subcontractors and the City. Subcontractors have no rights as third-party beneficiaries under this Contract except as may be provided in the Article XXIV. You must implement such measures as may be necessary to ensure that your Subcontractors are bound by all applicable provisions of the Contract.
2. All Subcontractors are subject to the approval of the Chief Procurement Officer. You must not substitute a Subcontractor previously accepted by the Chief Procurement Officer unless the substitution is acceptable to the Chief Procurement Officer. All requests to subcontract must be submitted on a form approved by the Chief Procurement Officer.
3. You are responsible in all aspects and at all times for all Subcontractor Work.

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4. Except as required under Article XXIV, you must upon request furnish the Chief Procurement Officer with one copy of each written subcontract and subsequent modifications signed by you and the Subcontractor evidencing the agreement. All subcontracts must be in writing. All subcontracts must require that (i) all Subcontractors' Work be performed in strict accordance with this Contract; and (ii) the Subcontractor is bound by and subject to the requirements of this Contract, whether or not a particular provision specifically mentions Subcontractors. Subcontracts may contain different provisions than are provided in this Contract with respect to payments, schedules, and matters not affecting the quality or timely completion of the Work under this Contract, but only if the City's rights are not thereby prejudiced. You must require each Subcontractor to enter into similar subcontracts with its Subcontractors. You must make available to each Subcontractor, before the execution of the subcontract, copies of this Contract, to which the Subcontractor will be bound pursuant to the requirements of this Section III.B.4.

If a subcontract provided to the City does not comply with these requirements, the City's failure to object is not a waiver of them, and you will remain liable to the City for all damages, costs, fines, losses and claims arising out of the non-compliance.

5. In the case of Work performed by Subcontractors, you must secure warranties from the Subcontractors addressed to and in favor of the City; deliver copies of them to the City upon completion of the Subcontractors' Work and; guarantee and assume full responsibility for the performance of any repair or replacement Work that may be required for the full period of the warranties provided. However, the delivery of the warranties will not relieve you from any obligations assumed under this Contract.
6. Contractor hereby collaterally assigns any or all subcontracts to the City, effective upon the City's exercise, in its sole discretion, of its right to assume such assignment as a remedy for Contractor's default or in the event of early termination. The Contractor must require each of your Subcontractors (including materialmen) to consent to a collateral assignment to the City of their respective subcontract with the Contractor. The Contractor's subcontracts must include language stating:

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

7. The City encourages Contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by § 2-92-586 of the Municipal Code, where not otherwise prohibited by Federal or state law.

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C. Site Conditions and Inspection

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the site may be provided to you by the City. Such information is not warranted by the City to be accurate. You are not entitled to rely on it. In signing this Contract you are acknowledging that when such information appears in Contract documents, prepared by the City or its Consultants, the City and its Consultants have not verified the information. Site plans do not constitute any representation by the City to you of site boundaries or characteristics.
2. You must take field measurements, verify field conditions and carefully compare those field measurements and conditions and any other information known to you with the Contract documents before commencing the Work. No allowance will be made to you for any extra labor and/or materials required due to site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the site. If land surveying Work is required under this Contract, you must have the Work performed by a land surveyor that is licensed as such by the State of Illinois.
3. Differing Site Conditions
 - a. During the progress of the Work, if you encounter subsurface or latent physical conditions at the site differing materially from those indicated in the Contract or unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, including the presence of unanticipated Hazardous Materials, you must promptly notify the City in writing of the specific differing conditions before the site is disturbed and before the affected Work is performed. See Section III.C.3 below.
 - b. Upon written notification, the Commissioner will investigate the conditions, and if the conditions differ materially from those indicated in the Contract documents, and cause a material increase or decrease in your cost or time required for the performance of any part of the Work, the City will make an adjustment in the Contract Price or Contract Time, or both, and the Contract will be modified in writing accordingly pursuant to Article XIV, "Changes in the Work" and Section XIII.G., "Payment for Changes." No Contract adjustment that results in a benefit to you will be allowed unless you have provided the required written notice and allowed City investigation before proceeding with Work. No Contract adjustment will be allowed under this clause for any effects caused on unchanged Work.
4. You must keep on hand at the Work site, for reference, a complete set of Contract documents for the Work, copies of all plans that you furnished, all additional and revised plans furnished by the City and all orders issued to you by the Commissioner that relate to the Work.

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D. Cleaning Up

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

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

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

You must thoroughly clean all equipment and materials that you installed and deliver them over undamaged and in a bright, clean, polished and new-appearing condition.

In addition to cleaning the newly installed equipment, you must remove all protective covering from existing equipment and clean and restore the existing equipment to its original condition.

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

E. Contractor's Warranties and Representations

You warrant and represent that:

1. You have carefully examined and analyzed the provisions and requirements of this Contract; you have inspected the Work site(s) to the extent made available by the City; from your own analysis you have satisfied yourself as to the nature and scope of work, all conditions, any obstructions and requirements needed for the preparation of your bid and the performance of this Contract, the general and local conditions, and all other matters that in any way may affect this Contract or your performance; and the time available for the examination, analysis, inspection and investigation was adequate;
2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that you can and will perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract;
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the City, its officials, agents, representatives or employees, has induced you to submit a bid nor have you relied upon any, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, that may be encountered at or on the Work site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this

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Contract; (iv) the general conditions that may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter;

4. You were given ample opportunity and time to review the Contract documents before submittal of your bid in order that you might request an addendum to the Contract documents that might correct or clarify them; you did so review the Contract documents, and every such correction or clarification has been included in this Contract or else, if omitted, you expressly relinquish the benefit of them and are willing to perform this Contract in its entirety without claiming reliance on any such omission or making any other claim on account of the omission;
5. In accordance with § 11-4-1600(e) of the Municipal Code, Contractor warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

7-28-390 Dumping on public way;

7-28-440 Dumping on real estate without permit;

11-4-1410 Disposal in waters prohibited;

11-4-1420 Ballast tank, bilge tank or other discharge;

11-4-1450 Gas manufacturing residue;

11-4-1500 Treatment and disposal of solid or liquid waste;

11-4-1530 Compliance with rules and regulations required;

11-4-1550 Operational requirements; and

11-4-1560 Screening requirements.

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

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

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

7. You understand that the City, in its acceptance of your proposal to perform the Work, materially relied upon your response to the Advertisement for Bids. The information you provided with the bid was accurate at the time it was made and no material changes in the information have occurred since then and will not be made without the express consent of the City.
8. In preparing and submitting your bid for this Contract, you have complied with and given full consideration to the following bidding requirements:
9. You obtained for bidding purposes copies of the complete Contract as identified in the advertisement for bids and all addenda issued by the City and have become familiar with them and all Contract requirements and conditions described in them;
10. You clarified to your satisfaction and complete understanding any doubt as to the true meaning and intent of all parts of the specifications and plans or other portions of the Contract documents;
11. You have no claim for relief because of alleged mistakes or omissions in your bid, and you will be held strictly to your bid as presented.
12. You have the capability and financial resources to perform all of the provisions and requirements of this Contract.
13. You can perform all of your obligations under this Contract in accordance with all of the Contract’s provisions and requirements.
14. Contractor warrants that no member of the governing body of the City or other units of government and no other officer, employee, or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Project to which this Contract pertains, has any personal interest, direct, or indirect, in this Contract. In accordance with 41 USC § 22, no member of or delegate to the Congress of the United States will be permitted to any share or part of this Contract or to any financial benefit to arise from it, nor, under applicable laws, will any member of or delegate to the Illinois General Assembly nor any alderman of the City or City employee. Contractor warrants that its officers, directors and employees, and the officers, directors and employees of each of member if a joint venture, and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Project that would conflict in any manner or degree with the performance of the Work under this Contract. Contractor further warrants that in the performance of this Contract, no person having any such interest will be employed.

Furthermore, if any federal funds are to be used to compensate or reimburse Contractor under this Contract, Contractor represents that it is in compliance with federal restrictions, and promises to remain so, including federal restrictions on lobbying set forth in § 319 of the Department of the Interior and Related Agencies Appropriations Act

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for Fiscal Year 1990, 31 USCS 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, Contractor must execute a Certification Regarding Lobbying, which is contained in the EDS attached to this Contract as an exhibit.

IV. PROPERTY

A. Ownership of Property

The City will be the owner of the Work, including any improvements, equipment and fixtures installed or constructed by Contractor, as part of the Project or for which the City has paid Contractor to store in anticipation of installation or construction. The City's title shall be free and clear of liens, claims, security interests or other encumbrances, upon the earlier of installation, payment therefore or Final Completion of the Project; provided, however, that transfer of title to the City shall not relieve Contractor of any of its responsibilities under this Contract with respect to Work in Progress. Nor will the transfer of title constitute acceptance of any portion of the work.

B. Ownership of Detailed Specifications and Other Contract documents

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

Contract Plans	10 Sets
Subsequent Details	10 Sets
Specifications and Contract Documents	10 Sets

2. You must obtain specifications issued by organizations other than the City to which reference is made in the City's documents at your own expense. You must also retain them at the Work site and make them accessible to the Commissioner.

3. The City is the owner of the Project. All documents, data, studies, reports, and instruments of service prepared for or by the City under this Contract are the property of the City. During the performance of your Work, you are responsible for any loss or damage to documents while in your possession or the possession of a Subcontractor and you must restore any such document so lost or damaged at your expense.

4. You must deliver, or cause to be delivered, at any time during the term of this Contract, all documents, including drawings, models, specifications, estimates, reports, studies, maps, and computations, prepared by or for the City, under the terms of this Contract to the City, promptly upon reasonable demand for them or upon termination of the Work. If

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you fail to deliver them when required, then you must pay the City all damages the City may sustain by reason of the failure, including consequential damages.

C. Right of Entry

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

D. Damage to City Property

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

E. Right to Occupy Before Substantial Completion

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

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- b. The list of items remaining to be performed before the Work or portion of it to be occupied will be substantially complete;
- c. Whether you will need any types of insurance; and
- d. The effect of the City's use before Substantial Completion on required guarantees and warranties.

F. Substantial Completion and Acceptance of the Work

1. Ready for Inspection. When you deem the Work to be complete, you must notify the Commissioner, in writing, that the Work will be ready for an inspection and/or test on a date you specify. The notice must be given at least 5 days in advance of the date. If the Commissioner concurs that the Work will be ready for inspection or testing on the date given, the Commissioner will make the inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is substantially complete does not relieve you of your responsibilities under the Contract. You must cooperate in all respects in the scheduling and performance of the inspection.
2. Payment of Remaining Retainage at Final Completion and Acceptance of the Work. Unless expressly stated otherwise in Book 2 or Book 3, the remaining Retainage will be paid when all Work, including Punch List work, is complete and you submit to the Commissioner a sworn affidavit stating the following:
 - a. All payrolls, invoices for materials and equipment and all other indebtedness connected with the Work for which the City might in any way be responsible have been paid or otherwise satisfied;
 - b. All waivers of lien required by the Contract have been provided to the Commissioner;
 - c. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier and others against you, the City, any agents or representatives of the City pertaining to the Work required under this Contract were provided in writing to the Commissioner and have been resolved;
 - d. The warranties and guarantees required by the Contract have been provided to the Commissioner; All warranties and guarantees are in full force and effect;
 - e. The surety's written consent, signed by its authorized representative, to final payment being made directly to you is attached to the affidavit;
 - f. Acceptance of final payment will constitute a general release to the City, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of the City or its agents, representatives, officials and employees relating to or connected with this Contract;
 - g. Record Documents have been provided to the Commissioner;
 - h. All other documents requested by the Commissioner have been provided; andWages paid and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

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FINAL CERTIFICATE

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

Signature and Title

Name Authorized Officer	Title
Contractor: _____	
Project: _____	

The payment of the remaining retainage to Contractor signifies the City's Final Completion and Acceptance of the Work.

V. SHOP DRAWINGS, PRODUCT DATA, RECORDS AND SAMPLES

A. Contractor's Responsibilities and Submittal Procedures

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

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

4. You must prepare and submit proper Shop Drawings, Product Data, Samples, video tape and photographs in accordance with your contractual obligations. By submitting them, you represent that you have determined and verified all materials, field measurements, field conditions and quantities, and that you have checked and

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coordinated the information contained within the Submittal, including your Subcontractors' Submittals, with the requirements of the Work and of the Contract documents. Shop drawings must establish the actual detail of all manufactured and fabricated items and indicate the proper relation to the adjoining Work.

5. You must date and stamp all Shop Drawings, Product Data, Samples, video tape and photographs. You must also indicate on them that you have reviewed and checked them before submission and found to be in conformance with the Contract. All Submittals must be transmitted to the Commissioner. You must clearly mark each Shop Drawing, Video Tape, Product Data and Sample, in accordance with the following for purposes of identification and record:

SUBMITTAL IDENTIFICATION

Name of Project: _____

Contract Name and Number: _____

Date of Submittal: _____

Submittal Number: _____

Re submittal of Submittal Number: _____

Identification of Deviations from Contract documents: _____

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

Type of Material and Manufacturer: _____

Intended use: _____

Applicable Standards such as ASTM numbers: _____

CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATIONS.

Contractor: _____

By: _____ *Date:* _____

6. Shop Drawings must be submitted with accurate dimensions. The Shop Drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Cross-section drawings must indicate minimum clearances and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must

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also be shown. All weights and dimensions must be certified before submission for review.

7. The Commissioner's review and acceptance of Shop Drawings in no way relieves you from responsibility for errors or omissions that may exist in the Work or on the certified Shop Drawings. Where such errors or omissions are discovered, you must correct them at no additional cost to the City. Submittals must be sufficiently complete to allow for proper review. You must submit all Shop Drawings, Product Data, Samples, video tape and photographs to the Commissioner for review with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. You must coordinate Submittals into logical groups or sets to facilitate review of several related items.
8. Any Submittal that in the Commissioner's sole opinion is not complete and in proper form will be returned to you without review. You must not submit as Shop Drawings duplicates or reproductions of any Contract documents issued by the City.
9. You must provide Submittals in the following quantities unless a greater number is specified elsewhere in the Contract or required by the Commissioner:
 - a. Shop Drawings: Submit one reproducible and six prints. (Prints must be collated into sets.);
 - b. Product Data: Submit six copies of Product Data;
 - c. Samples: Submit four samples; and
 - d. Video tape and photographs (when required under the Contract): Submit two copies of Video tape (VHS format) and photographs.
10. Before submitting Shop Drawings, Product Data, Samples, video tape and photographs, you must notify the Commissioner in writing of any deviations in the Submittals from the requirements of the Contract. If deviations from the Contract requirements are rejected by the Commissioner or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensable by a time extension.

B. Review by the Commissioner

1. Submittals will be reviewed by the Commissioner for compliance with the Contract. In reviewing them the Commissioner will not verify dimensions and field conditions. Any such review does not relieve you, your Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract, nor does it relieve you or them from responsibility for (i) errors of any sort in Shop Drawings, Samples and Product Data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract that may not be indicated on Shop Drawings when reviewed. You are solely responsible for any quantities that may be shown on the Shop Drawings. The Commissioner's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. You must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from

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the Commissioner with a stamp authorizing Work and/or delivery and installation to be performed, as described in Section V.B.3, immediately below.

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

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C. Source of Materials

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

If you decide to investigate sources of supply different from those from which you previously provided approved samples, you must furnish without charge such preliminary samples as the Commissioner may require. Tests will be made on these preliminary samples and reports rendered, but it is understood that such tests are for information purposes only and that they must not be construed as a guarantee of acceptance of any materials which may be delivered later for incorporation into the Work. Only materials actually delivered for use will be considered and their acceptance will be based solely upon the results of the tests made on these materials.

D. Record Documents

Before Acceptance of the Work, you must deliver all Record Documents to the Commissioner, in suitable transfer cases clearly marked "Record Documents," arranged in proper order and indexed. At the discretion of the Commissioner, the Commissioner may make the submission of all Record Documents a prerequisite to reduction of retention from 5% to 3% under Section XIII.D., "Retainage," of the Contract.

E. Record Drawings

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

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F. Record Shop Drawings and Product Data

1. As the work progresses, you must keep a complete and accurate record of the changes and deviations from the Work as shown on the Shop Drawings and Product Data indicating the Work performed. You must furnish Record Shop Drawings in a form and quantity acceptable to the Commissioner. Record Shop Drawings must be submitted for all items reviewed as Shop Drawings. Record Shop Drawings must be legibly drawn on sheets of mylar or such other medium as directed by the Commissioner. Record Shop Drawings must be submitted on the same size sheets as the Contract Document drawings and include an index of all items.
2. You must furnish 5 record copies of Product Data in loose leaf binders. Loose leaf binders must be subdivided by Submittal numbers and must contain an index of all items.

G. Instructions, Parts List and Operation and Maintenance Manuals

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

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

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

H. Adjustment of Equipment

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

I. Project Account Records

1. Project Data and Records

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- a. You and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers and mechanics employed by them in connection with the Work. The record must be open at all reasonable hours to the inspection of the Commissioner and to the Director of Labor of the State of Illinois and his deputies and agents. You also must furnish the Commissioner and the Chief Procurement Officer with certified copies of the payrolls, in accordance with Section XIII.B.3.d.
- b. You must furnish to the Commissioner upon request a written statement, verified by affidavit, giving the names and addresses of all persons, firms and corporations who have up to that date furnished labor or materials in the performance of the Contract and the amounts due or to become due them.
- c. You and all Subcontractors must furnish the Commissioner with such information as the Commissioner may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution and any other information that the Commissioner may require. You must, on request, furnish the Commissioner with copies of delivery tickets and invoices, in triplicate, covering the expenditures on the Contract.
- d. You must keep and retain records relating to this Contract and must make the records available to representatives of the City and the Federal government, including the sponsoring Federal agency, other participating agencies, and the Comptroller General of the United States, at reasonable times during the performance of this Contract and for at least three years after termination of this Contract for purposes of audit, inspection, copying, transcribing and abstracting.
- e. No provision in this Contract granting the City or the Federal government a right of access to records is intended to impair, limit or affect any right of access to the records that the City or the Federal government would have had in the absence of such provisions.

J. Audits

1. You must furnish to the Commissioner and authorized representatives of the Federal government such information as may be requested relative to the progress, execution, and cost of the Work. You must maintain complete records showing actual time devoted and costs incurred. You must maintain your books, records, documents, and other evidence, and adopt accounting procedures and practices sufficient to record properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in the connection with the Work for 5 years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
2. You must deliver or cause to be delivered all documents (including all Deliverables and supporting data, records, graphs, charts and notes) prepared by or for the City under the terms of this Contract to the City promptly, in accordance with the time limits prescribed in this Contract, and if no time limit is specified, then upon reasonable demand therefore or upon termination or completion of the Services under this Contract. If you fail to make

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the delivery, then and in that event, you must pay the City reasonable damages the City may sustain by reason of the failure.

3. The City and the Federal government have the right to audit all payments made to you under this Contract. Any payments to you that exceed the amount to which you are entitled under the terms of this Contract are subject to set-off. If the City, in its sole discretion, chooses to conduct an audit either during the performance of the Work or in the five-year period after final payment, each audited calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that you or any of your Subcontractors has overcharged the City in the audited period, the City will notify you. You must then promptly reimburse the City for any amounts the City has paid you due to the overcharges and also some or all of the cost of the audit, as follows:
 - a. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Contract Prices, of the goods, work, or services provided in the audited period, then you must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;
 - b. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Contract Prices, of the goods, work, or services provided in the audited period, then you must reimburse the City for the full cost of the audit and of each subsequent audit.
4. Your failure to reimburse the City in accordance with V.I.2.c above is an event of default under this Contract, and you will be liable for all of the City's cost of collection, including any court cost and attorneys' fees.

K. Confidentiality

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

L. Electronic Records

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

VI. ASSIGNMENT

A. Assignment of Contract by Contractor

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

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B. Assignment of Funds or Claims by Contractor

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

C. Assignment of Contract by City

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

D. Assigns

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

E. Requests to Subcontract

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

VII. QUALITY OF WORKMANSHIP, EQUIPMENT AND MATERIALS

A. Standard of Performance

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

B. Correction of Work

1. You must, upon discovery of any defective or non-conforming Work, or when directed in writing by the Commissioner, promptly re-perform, correct or remove all Work identified to be defective or as failing to conform to the standards set forth in, or any requirement of the Contract, whether or not completed. You must bear all costs of correcting the defective or non-conforming Work, including costs associated with removing any defective or non-conforming Work, replacing the defective or non-conforming Work with non-defective, conforming Work and any compensation for any additional equipment, materials and/or services made necessary by the removal and replacement.
2. If you do not proceed with re-performance, correction or removal of the defective or non-conforming Work after written notice from the City within the time period designated by the notice, the City may correct or remove it and may store the materials and/or equipment at your expense, then complete the corrective Work. If you do not pay the

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costs incurred for the removal, storage and correction within 10 days after you receive written notice from the City of the amount of the costs, the City may upon 10 additional days' written notice, sell any such materials and/or equipment at an auction or at a private sale and will account for the net proceeds, after deducting all the costs you are required to bear, including compensation for the City's services. If the proceeds of sale do not cover all costs for removal and correction of the Work, the difference will be charged to you with a deduction of any amounts due you, and an appropriate Contract modification will be issued. If later payments due you are not sufficient to cover the amount, you must pay the difference to the City, or the City may deduct the amount from any other funds due to you, including any amounts due under any other contract between City and you.

3. You must not perform any work without lines and grades or beyond the lines shown on the drawings or outside the scope of the Contract, without the prior written consent or direction of the City. It is not authorized, and if you do so you perform it at your sole expense. Upon direction of the City, work so done must be removed or replaced and those areas restored to their previously existing state at your sole expense.
4. Neither the determination of Acceptance of the Work, nor payment, nor any provisions in the Contract will relieve you of responsibility for defective or non-conforming Work, faulty materials, equipment or workmanship, and unless otherwise specified, you must remedy any defects due to the foregoing and pay for any damage to the Work or other property resulting from defective or non-conforming Work, or faulty materials, equipment or workmanship throughout the Warranty Period, as defined in Section VII.E, "Warranties," below. The City will give you written notice of the observed defects with reasonable promptness.

C. Materials and Equipment

1. Quality of Materials. Unless otherwise specified in the Contract you must use all new materials for the Project and use them in such a manner as to produce completed Work that conforms with the Contract and is acceptable in every detail to the Commissioner. Only materials that conform to the requirements of these specifications may be incorporated or used in the Work. In the absence of a definite specification, materials must be the best of their respective kind with properties best suited to the Work required.
2. Materials Inspection and Responsibility. Before any material is incorporated into the Work, you must submit a "Request for Materials Inspection" to the Commissioner. You are solely responsible for submitting the requests with sufficient time for the City to conduct its inspection. You are not entitled to payment for uninspected materials. The City has the right to inspect any material to be used in carrying out this Contract. The City does not assume any responsibility for the availability of any materials or equipment required under this Contract. By performing any tests or accepting any materials, the City in no way relieves you of any of your obligations or responsibility under this Contract. Materials, components or completed Work that do not comply with the Detailed Specifications and other requirements of this Contract may be rejected by the City, and you must replace them at no additional cost to the City. After you receive notice from the City that materials or components have been rejected, you must promptly remove them from the City's premises at no additional cost to the City.

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D. Substitution of Materials

1. The City will consider your request for substitution in cases of product unavailability or other conditions beyond your control. You must submit each request for substitution separately and each must include:
 - a. Complete data substantiating compliance of proposed substitution with requirements stated in the Contract;
 - b. Product identification, including manufacturer's name and address
 - c. Manufacturer's literature identifying:
 - (1) Product description
 - (2) Reference standards
 - (3) Performance and test data
 - (4) Samples, as applicable
 - (5) Names and address of similar projects on which the product has been used, and date of each installation;
 - d. Itemized comparison of the proposed substitution with product specified that lists significant variations;
 - e. Data relating to changes in the Schedule;
 - f. Any effect of substitution on other parts of the Work, any Subcontractors, or any separate contracts;
 - g. List of changes required in other Work or products;
 - h. Accurate cost data comparing proposed substitution with product specified, including the amount of any net change to Contract Price;
 - i. Designation of required license fees or royalties; and
 - j. Designation of availability of maintenance services, sources of replacement materials.
2. When you make a formal request for substitution make you are warranting and representing that:
 - a. The proposed substitution is equivalent to or superior in all respects to the product specified;
 - b. The same warranties and guarantees will be provided for the substitute as for the product specified; and
 - c. You will coordinate the installation of accepted substitutes into the Work and will make such changes as may be required for the Work to be complete in all respects.
3. If evidence you present does not, in the sole opinion of the Commissioner, provide a sufficient basis for reasonable certainty that the proposed substitution or deviations will provide a quality, result, function, and esthetic appearance, among other attributes, at least equal to that attainable by the specified product, the Commissioner may reject the substitution or deviation without further investigation.

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4. The Commissioner will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Commissioner will not approve proposed substitutes as equal to items specified that, in the Commissioner's opinion, would be unharmonious, or otherwise inconsistent with the character, quality or design of the Project.
5. You must bear any additional cost, or any loss or damage, arising from the substitution of any material or method for those specified, including the cost for damages incurred by other contractors notwithstanding approval or acceptance of the substitution by the Commissioner, unless the substitution was initiated by the written request or direction of the Commissioner.
6. The investigation review and approval of substitute materials requires a minimum of 30 days beyond that required for specified routine items. No request for a delay or disruption will be allowed whether or not the substitution is granted.
7. Approval by the Commissioner of a substitution of material will be given in a Contract modification as required in Article XIV, "Changes in the Work."

E. Warranties

1. You warrant all Work furnished under this Contract against defective materials and workmanship, improper performance and non-compliance with the Contract for a period of one year after the date of Final Completion and Acceptance of the Work ("Warranty Period"), except as otherwise specifically stated in other parts of the Contract or within such longer periods of time as may be provided by law or by the manufacturer, which periods will then become the Warranty Period as applicable. The warranty is automatic, but if the Commissioner so directs, you must confirm it in writing, including the name of the Project as designated in the Contract, signed by an officer of the company having authority to do so. The confirmation must state:

"This document serves as a one - year written warranty for the Work performed, and material and equipment installed on the above referenced project. This warranty incorporates all provisions of the Contract that refer or relates to the warranty. This warranty begins on _____ (date) _____."

2. Contractor's Warranty Obligations:

Your warranty is in addition to any Manufacturer's warranties. During the Warranty Period, you must repair and replace at your own expense, when so ordered by the Chief Procurement Officer or the Commissioner, all Work that may develop defects whether these defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. The Warranty Period for any equipment or material that is repaired or replaced under the warranty is extended for a period of one year from the date of the last repair or replacement.

3. You must bear all costs associated with any repair or replacement under this section, including removal, material, transportation, and reinstallation.
4. Manufacturers' Warranties

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- a. You must:
 - (1) ensure that all required manufacturers' warranties pass through to the Department;
 - (2) submit all applicable manufacturers' warranties to the Commissioner and ensure that all warranty forms have been completed in the Department's name and registered with the appropriate manufacturers.
- b. Whenever you make repairs or provide replacements under Section VII.E.4, you must provide a manufacturer's warranty for the repaired or replaced Work, if standard with the manufacturer, in addition to your warranty under Section VII.E.2.

VIII. PERSONNEL

A. Competency of Workers

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

B. Supervision and Superintendence

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

C. Contractors Project Personnel

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

D. Key Personnel

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

You must employ and assign to work on this Contract a qualified engineer as a project manager with a valid Professional Engineer's License in the State of Illinois, satisfactory to the Commissioner, to act as a contact person with the Commissioner and a Registered Land Surveyor to set and maintain the lines and grades necessary for the proper performance of the Work under this Contract.

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E. Prevailing Wage Rates

In the performance of the Work, you are fully responsible for paying not less than the prevailing rate of wages as determined by the Illinois Department of Labor, which must be paid to all laborers, mechanics, and other workers performing Work under this Contract.

Your attention is called to the generally prevailing hourly rate of wages, as determined by the Illinois Department of Labor, which are bound in Book 2 of these specifications and which are incorporated into the Contract. These wage rates are also the prevailing wage rates for the City of Chicago, as determined by the Department as of the date of publication of these specifications.

The wage rates set forth in these specifications were the rates in effect at the time these specifications were issued. If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid for the Work before completion of the Project, the revised rate applies to this Contract from the effective date of the revision, but the revision does not entitle you to any increased compensation under the terms of this Contract.

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

F. "Living Wage"

Section 2-92-610 of the Municipal Code ("**Living Wage Ordinance**") requires that eligible contractors (see VIII.F.1 and VIII.F.2 below) pay a specified minimum living wage ("Base Wage") to particular categories of workers employed in connection with the performance of certain City contracts. The Living Wage Ordinance applies to any written agreement or subcontract in connection with which "the City is committed to expend or does expend funds" and "which requires in its performance the employment" of those categories of workers. You must comply to the extent required by law and as otherwise permitted by law.

1. Section 2-92-610 of the Municipal Code 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 § 2-92-610 and regulations promulgated under it:
 - a. If you have 25 or more full-time employees, and
 - b. If at any time during the performance of the Contract you and/or any Subcontractor or any other entity that performs any portion of the contracted work (collectively "**Performing Parties**") use 25 or more full-time security guards, or any number of other full-time Covered Employees, then
 - c. You must pay your Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum "Base Wage" as determined in accordance with this provision for all work performed under the Contract.

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2. Your obligation to pay, and to assure payment of, the Base Wage will begin at any time during performance of the Contract when the conditions set forth in 1.a and 1.b above are met, and will continue after that until the end of the Contract.
3. The Base Wage is \$10.60 per hour, and each July 1 after that, 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 Contract, you and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then you and all other Performing Parties must pay the prevailing wage rates.
4. You must include provisions in all subcontracts requiring your Subcontractors to pay the Base Wage to Covered Employees. You must provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by you or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit you and/or Subcontractors to verify compliance with the Living Wage Ordinance. Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in ineligibility for any award of a City contract or Subcontract for up to three years.
5. Not-for-Profit Corporations: If you are a corporation having Federal tax-exempt status under § 501(c)(3) of the Internal Revenue Code and are recognized under Illinois not-for-profit law, then the provisions of Sections 1 through 4 above do not apply.

G. Employment Preferences

1. Veterans Preference

In accordance with the Veterans Preference Act, 330 ILCS 55/0.01 *et seq.*, employment and appointment preference shall be given to veterans when filling positions. This preference may be given only where the individuals are available and qualified to perform the Work. Contractor must ensure that the above provision is inserted in all contracts it enters into with any Subcontractors and any labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any material, labor, or services in connection with this Agreement.

2. Chicago Residency Requirements

If the funding under this contract is \$100,000 or more, Contractor and all subcontractors that perform work on the site on the construction project undertaken pursuant to this contract shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in § 2-92-330 of the Municipal Code, unless otherwise prohibited by law. In addition to complying with this requirement, Contractor and all Subcontractors must make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

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"Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The contractor shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the project. The contractor and subcontractors shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) must be submitted weekly to the Commissioner of the supervising department in triplicate, shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

Full access to the contractor's and subcontractors' employment record shall be granted to the Chief Procurement Officer, the Commissioner of the supervising department, the Superintendent of the Chicago Police Department, the inspector general, or any duly authorized representative thereof. The contractor and subcontractors shall maintain all relevant personnel data in records for a period of at least three years after final acceptance of the work.

At the direction of the supervising department, affidavits and other supporting documentation will be required of the contractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the contractor to provide utilization of actual Chicago residents shall not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by actual Chicago residents.

When work is completed, in the event that the City has determined that the contractor failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by actual Chicago residents or has failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance it is agreed that 1/20 of 1 percent (.05%), 0.0005, of the approved contract value for this contract shall be surrendered by the contractor to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll date may subject the contractor or subcontractors or employee to prosecution. Any retainage to cover contract performance that may become due to the contractor pursuant to § 2-92-250 of the Municipal Code may be withheld by the City pending the Chief Procurement Officer's determination whether the contractor must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity,

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Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this contract.

3. Employment of Illinois Laborers on Public Works Projects

Contractor must use only Illinois laborers in the performance of this Contract to the extent (1) required by the Employment of Illinois Laborers on Public Works Projects Act, 30 ILCS, 570/0.01, as amended from time to time and (2) otherwise permitted by law.

IX. PERMITS AND LICENSES

A. Contractor Obtains Permits

Whenever the Work under this Contract requires permits to be obtained from the City or other public authorities, you must obtain them and furnish triplicate copies of the permits to the City before the Work covered by the permits is started. You must obtain all the necessary permits and pay the associated fees for the special use of, or removal, alteration or replacement of, certain City-owned facilities and appurtenances such as traffic signs, parking meters, trees, sewers, hydrants, bridges and viaducts that are required for you to perform your Work, and you must abide by all applicable municipal ordinances. You must also furnish copies of these permits to the City before the Work covered is started. Information with regard to the above may be obtained by contacting the appropriate City Departments. See Article X below. **NO WORK IS ALLOWED TO PROCEED BEFORE YOU OBTAIN REQUIRED PERMITS.**

B. City Responsibility

The City will obtain permits required from the Metropolitan Water Reclamation District of Greater Chicago, the IEPA, IDOT Division of Water Resources, the U.S. Coast Guard, and the U.S. Army Corps of Engineers.

C. Highway Permit Bond

If you are required to post a highway permit bond, it must remain in effect for at least five years from the date the permit is issued.

X. COORDINATION WITH OTHER CITY DEPARTMENTS

A. Water System Work and Usage

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

B. Sewer System Work

If you will be constructing, repairing, adjusting or cleaning any subsurface structure designed to collect or transport storm and/or sanitary waste water, either in private property or in the public way you, through a licensed drainlayer, must obtain a permit issued under

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this Section X.B. (A licensed drainlayer is a person possessing a current sewer and drain license issued by the Department of Water Management.) Requests for permits must be made at the **Department of Water Management (Sewers and Drains), 333 S. State Street, Room 410, Chicago, IL 60604-3971; 312/747-8117.**

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

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

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

C. Traffic Control

When it becomes necessary for you to close a street, in whole or in part, you must make arrangements with the Department of Transportation, Bureau of Inspections, Construction Compliance Section (Public Way Permits), Room 804, City Hall, Chicago, Illinois 60602, at least two weeks in advance of the closure. The Bureau of Inspections may issue a permit, partially closing a street and setting forth the requirements regarding the furnishing, placing, maintaining and removing of signs, lights and barricades, the furnishing of flaggers, and other provisions for the safe handling of traffic during your use of the street.

You are responsible for all traffic control necessary in obtaining an IDOT Utility Permit for Work within the IDOT right of way.

D. Construction Work Within Public Way

In order to perform any construction work within the public way, you must provide a letter of credit in an amount as required by the Commissioner, with a minimum amount of \$5,000. In addition, any constructing or reconstructing sidewalks, driveways, curb and/or curb and gutter, alleys or finished concrete pavement requires a permit from the Bureau of Traffic in accordance with Chapter 10-20 of the Municipal Code. If you are not licensed as a sidewalk contractor, before any permits for the work can be issued, you must submit written evidence to the Director of Construction Compliance, Bureau of Inspection, that a licensed sidewalk contractor will perform the Work on your behalf. Contact the **Department of Transportation, Bureau of Inspection, Construction Compliance, City Hall, Room 905, 121 N. LaSalle Street, Chicago, Illinois 60602; (312/744/4656).**

E. Parking Meter Removal and Replacement

The City will remove and reinstall any parking meters as may be required. However, you must pay all fees required by § 9-68-050 of the Municipal Code. You must advise the

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Department of Revenue, Parking Operations, in writing, of the location and meter number of those meters to be removed, at least five business days before the date needed for the removal. As soon as the date is known, you must also advise the Department of Revenue, Parking Operations, in writing, of the date when meters may be reinstalled. Contact the **Department of Revenue, Street Operation, 2735 North Ashland, Chicago, IL 60614;(312) 742-6978, fax (312) 645-0811; Attention: Manager on Street Parking.**

You must not remove any parking meters without the express written consent of the Commissioner. If you violate this provision, you (a) recognize that the City will suffer damages as a result, including the costs incurred by the City in tracking, retrieving, and repairing damage to the parking meters, costs that are difficult to ascertain, and (b) will be liable for liquidated damages in the amount of \$350 for each parking meter you removed, which amount will be deducted from any amount(s) due or that may become due you. Contact the **Department of Revenue, Street Operation, 2735 North Ashland, Chicago, IL 60614;(312) 742-6978, fax (312) 645-0811; Attention: Manager on Street Parking.**

F. Traffic and Parking Sign Removal and Replacement

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

G. Trees

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

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

H. Bridges, Viaducts, or Publicly Owned Structures

Before construction, any proposed Work within 50 feet of any existing bridge, viaduct, or publicly owned structure will require a permit from the Commissioner of Transportation. There is no fee for this permit. The permit must be obtained from the **Department of**

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**Transportation, Bureau of Inspections, Construction Compliance, City Hall, Room 905
121 North LaSalle, Chicago, Illinois 60602; (312/744-4656).**

I. Demolition

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

J. Provisions Relating to River Traffic

When carrying out the Contract requires Work to be done over or under the Chicago River, you must comply with marine regulations in every way, so that river traffic may be protected. You must use special care to avoid obstruction of the river. If you find it necessary to obstruct the river at any time, you must advise the Commissioner, through the office of the Chief Bridge Engineer, who will make the necessary inquiries of the proper waterway officials, so that you can schedule your Work without interfering with the movement of vessels. Contact the **Department of Transportation, Bureau of Inspections, Construction Compliance, City Hall, 121 North LaSalle Street, Room 905, Chicago, Illinois 60602; (312/744-4656)**.

K. Building Permits

1. Contact the Department of Construction and Permits (DCAP), City Hall, 121 North LaSalle Street, Ninth Floor, Chicago, Illinois 60602; (312/744-8670).

XI. SCHEDULE

A. Time

1. The date you must begin the Work is the date set forth in the Contract or such other date as may be established at the discretion of the Commissioner in a Notice to Proceed. You must provide to the Commissioner a schedule within 14 days after the Notice to Proceed for the performance of the Work that complies in all respects with the Contract Documents, within the Contract Time. The schedule may be used as a means of determining your progress in performance of the Work, but neither your provision of the schedule to the City, nor its acceptance or use by the City, acts in any way to relieve you of any of your obligations under the Contract.
2. Progress and Completion. TIME IS OF THE ESSENCE IN THIS CONTRACT. No time extensions will be allowed unless they are contained in a Contract Modification that has been approved and executed by the City. Liquidated damages will be assessed against you for late completion of the Work and failure to achieve any milestone dates that provide for liquidated damages set forth in the Contract. You must not suspend any Work that may be subject to damage by climatic conditions without the Commissioner's prior written approval. Notwithstanding any other terms contained in this Contract, you must take measures to protect the Work and to minimize the impact of such conditions on the progress of the Work.

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B. Progress Schedule

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

C. Construction Operations Plan

1. You must, within 14 days after Notice to Proceed, submit to the Commissioner for review the order of procedure you propose to follow in performing the Work. Work begins only after your proposed order of procedure in performing the Work, the Schedule and the methods, and the structures and equipment to be employed have been submitted to and approved by the Commissioner in writing. The Commissioner requires a reasonable amount of time to examine the procedure and Schedule. As Work progresses, the Commissioner may require changes or modifications in the procedure and Schedule, or in the methods, structures and equipment. If so, as soon as you receive notice from the Commissioner, you must perform further Work only in accordance with the changed or modified procedure and Schedule and the changed or modified methods, structures and equipment, as the case may be, that the Commissioner has approved in writing.
2. The Commissioner, in his sole discretion, may reject or require modification of any proposed or previously approved order of procedure, method, structure or equipment, that he or she considers to be unsafe for the Work under this Contract, or for other Work being carried on in the vicinity, or for other structures, or for the public, or for workmen, engineers and inspectors employed thereon, or that in the opinion of the Commissioner will result in undesirable settlement of the ground, or that will not provide for the completion of the Work within the period of time specified in the Schedule, or that is contrary to any other requirement of this Contract.
3. The City's acceptance or approval of any order or procedure, method, structure, or equipment that you submitted or employ does not in any manner relieve you of

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responsibility for the performance of the Work, or for the safety of the performance of the Work under this Contract, or from any liability whatsoever on account of any procedure or method you employ or due to any failure or movement of any structure or equipment you furnish. Even if the Commissioner has given an approval, should any structure or equipment installed under this Contract afterwards prove insufficient in strength or fail in any manner whatsoever, the insufficiency or failure in no way forms the basis of any claim for extra compensation for delay, or for damages or expenses caused by the insufficiency or failure, or for an extension of time for completion of the Work, or for material, labor or equipment required for repairing or rebuilding the structure or equipment, or for repairing or replacing any other Work that may have been damaged by the movement or insufficiency or failure of any such structure or equipment, respectively.

D. Critical Path Method (“CPM”) Schedule

1. You must format the Schedule to show the proposed starting and completion date for the various stages of the Work, including any float time, and must prepare it in such a way that it can be used to plot actual progress against proposed progress. You must update the Schedule and submit it to the Commissioner no less than monthly or as directed by the Commissioner. The Commissioner may request more frequent Submittals. Monthly payment will be withheld for failure to submit updated Schedules. One copy of the Schedule must be submitted to the Commissioner in a reproducible format. A copy of the Schedule must be submitted on a computer diskette in a format acceptable to the Commissioner.
2. You must assure that the Schedule includes, at a minimum:
 - a. Project name, Contract number, Contractor's name, data date and plot date on each separate sheet. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included in them.
 - b. The order and interdependency of activities, indicating the sequence in which you plan to perform the Work; the Schedule must describe and indicate the critical path; and
 - c. Estimates of man hours and/or crew sizes for each activity.
 - d. The dates for:
 - (1) starting and completing the various stages of the Work, including milestones identified by the City in the Contract;
 - (2) placing material orders, delivery of materials and equipment;
 - (3) preparation, submittal and approval of all required submittals to the City;
 - (4) procuring material and equipment furnished by the City;
 - (5) interface activities performed by other contractors or Subcontractors upon which your Schedule depends;
 - (6) all Work activities and field construction operations;
 - (7) equipment installation, testing and balancing.

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3. For purposes of the Schedule, "activity" means each logically separate part of the Work defined by an observable start and an observable finish, subject to the following:
 - a. To establish the scope of an activity for Schedule purposes, you must form a single activity from the largest grouping of related operations that permit a continuous and measurable flow of Work;
 - b. The scope of an activity must be small enough to permit a reasonable appraisal of its status or as directed by the Commissioner;
 - c. Each activity on the Schedule must be manpower loaded;
 - d. The activities must be defined so that the average activity has a value of approximately \$25,000, with no activity exceeding \$200,000 without the consent of the Commissioner; and
 - e. Activities of other contractors or companies that must be completed before the start of your Work or portion of Work must be included in the Schedule as milestones and identified with a designation approved by the Commissioner.
4. You must furnish the following information on the Schedule for each activity:
 - a. Activity numbers assigned to the related portions of Work in the format of the project specification division and section numbers. You must submit the activity numbers to the Commissioner for review and approval;
 - b. A description of the activity that is sufficiently detailed to permit an evaluation of your performance of the Work described;
 - c. Duration of the activity in days, unless otherwise noted;
 - d. Responsibility code for each activity that is not performed by you, indicating which Subcontractor, supplier, fabricator, or other contractor is to perform the activity;
 - e. Each activity must be identified with early/late start, early/late finish, and total float;
 - f. A breakdown by monthly node of dollar amount and percentage of Contract Price.
5. In addition to the above, any activity whose start or finish dates has been specified elsewhere in the Contract must be shown as the specified dates in the Schedule.
6. The following information must be furnished on the Schedule as summary items:
 - a. The projected total percentage complete, on a monthly basis;
 - b. Anticipated total partial payments, on a monthly basis, including Subcontractor payment breakdown; and
 - c. The projected total manpower requirements, on a weekly basis.
7. Within 14 days after receipt of the detailed Schedule and supporting documents, the Commissioner will either approve the Schedule or reject it with written comments. If the Schedule is rejected, you must submit a revised Schedule within seven days of the date of rejection. The Commissioner's decision to reject the schedule is final and you may not dispute it under Article XX of the Contract.

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8. You must provide prompt written notice to the Commissioner of any events or other changes that may delay or accelerate the Schedule.
9. If you fail to provide the Schedule within the time prescribed and/or updates within the stated time frames, it is an event of default under the Contract, and the Commissioner may, in addition to any other remedies available to the City, withhold monthly partial payments until such time as you submit the required information.
10. Changes to the Schedule
 - a. If you propose to make any changes to the Schedule, you must provide the Commissioner notice of the proposed changes, in writing, stating the reasons for the change, identifying each changed activity (including durations and interrelationships between activities) and providing a diskette of the proposed changed Schedule. You must submit the proposed revision for Commissioner review and approval 10 days before starting the proposed change.
 - b. The originally approved Schedule will be the Baseline Schedule. The Commissioner, in his sole discretion, may approve or disapprove the proposed change in the Schedule to the extent that the change does not extend the Contract Time. He will provide a decision in writing to you within 10 days of receipt of your submission. All monthly updates must be plotted against the current revision of the Baseline Schedule.
 - c. If the Commissioner approves the change to the Schedule you must submit a revised schedule incorporating the change(s) within 10 days after approval along with a written description of the change(s) to the schedule.
 - d. Any proposed change that would result in an extension of Contract Time requires a written modification of the Contract pursuant to Section XXIII.B, "Modifications," of the Contract.
11. Updating. The Baseline Schedule will only be changed based on a Contract Modification that extends the Contract duration.
 - a. All updates will be plotted against the Baseline Schedule. You must update the Schedule on a monthly basis coincident with the submission of the pay estimate. The updated information must include the Baseline Schedule detail and the following additional information for each activity:
 - (1) Actual start dates;
 - (2) Actual finish dates;
 - (3) Actual activity percent complete;
 - (4) Remaining duration of activities in progress; and
 - (5) Critical activities must be identified or highlighted.
 - b. The updated information must include the Baseline Schedule detail and the following additional information for each summary item:
 - (1) Actual monthly and total-to-date Work percentage complete.

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- (2) Actual monthly partial payments, including Subcontractor partial payments; and
 - (3) Actual weekly and total-to-date manpower utilization.
- c. The City may withhold partial payments if you do not submit updates as required.
12. Neither an update nor Schedule change may, in itself, extend the term of this Contract. The term of the Contract may only be extended by a written Contract Modification executed pursuant to Section XXIII.B, "Modifications," of the Contract.
13. Narrative Report. As part of the Schedule update, you must prepare a written narrative report, highlighting the progress during the past update period. This written report must include the following information:
- a. Summary of Work accomplished during the past update period;
 - b. Contract milestone comparison chart;
 - c. Analysis of critical path(s);
 - d. Analysis of time lost/gained during the update period;
 - e. Identification of problem areas; and
 - f. Recommended solutions to current problems.

E. Recovery Schedule

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

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F. Time for Completing Punch List

1. TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK, and you must begin work immediately after receipt of a Punch List. Your failure or that of your Subcontractors to begin the Punch List work within three days of receipt of the Punch List is an event of default.
2. You must diligently prosecute the Punch List work once begun and complete it within 30 days from receipt of the Punch List. If you fail to complete Punch List work within the 30 day time period, you must pay the liquidated damages for the time to complete the Work in excess of 30 days after the receipt of the Punch List as set forth for "Punch List Work" in Book 2.
3. If liquidated damages are assessed, they will be added to the previously determined liquidated damages assessed as of the Substantial Completion Date or the City's beneficial occupancy of the Project, whichever occurs earlier. The City's takeover of the Project under Section XXI.C.3.b., however, does not constitute beneficial occupancy for purposes of liquidated damages.

G. No Damages for Delay; Extensions of Time

1. Should you be delayed in starting, prosecuting or completing the Work by any act of the City, including a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the City, or by order of the City, or anyone employed by or acting on behalf of the City, or by any cause beyond your control, none of which are due to any fault, neglect, act or omission on your part, then your relief is limited to an extension of the Contract Time that is no greater than the duration of any such delay. The extension of time releases and discharges the City, its employees, officials, agents and representatives from all claims for damages of whatever character, including any claims you may make on account of disruption, changes in sequence, interference, inefficiency, direct or indirect cost or any other causes of delay.
2. Once a delay begins, you must notify the Commissioner in writing of the cause within five days after the delay begins. Consideration of a time extension for events beyond your reasonable control will be made if the delay directly impacts the Schedule for completion of the Work. Events considered to be beyond your reasonable control are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, freight embargoes, or weather significantly more severe than the norm, but only if the listed causes were not foreseeable and did not result from your fault or negligence and only if you took reasonable precautions to prevent delays owing to such causes.

Unless otherwise provided in the Contract, the Contract Time is based on normal weather conditions. An extension is granted for weather significantly more severe than the norm only if you demonstrate to the satisfaction of the City that any delay in the progress of the Work was due to such weather. The basis used to define normal weather will be the "normal" data as compiled by the United States Department of Commerce, National Oceanic and Atmospheric Administration in their most current report entitled "Local Climatological Data, Annual Summary with Comparative Data" for the month for which the time extension is sought. The effects of weather less severe

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than the norm may be taken into account in considering your requests for time extensions for the effects of more severe weather.

3. No extension of time will be granted under this Section for any delay if you, by your action or inaction, including your fault or negligence or that of your Subcontractors, caused the delay, or for which any remedies are provided under any other provision of the Contract.
4. The grant of an extension of time pursuant to this Section XI.G, "No Damages for Delay and Extension of Time," in no way constitutes a waiver by the City of any rights or remedies existing under this Contract, at law or in equity.
5. You must submit any claim for extension of time in writing to the Commissioner not more than 10 days after the delay begins. If the cause of the delay is continuing, only one claim is necessary, but you must report in writing when the cause for the delay ends within 10 days after it ends. If any claim that you make for extension of time does not comply with these time limits, you have waived your rights to any such extension. Any claim for extension of time must:
 - a. State the cause of the delay;
 - b. Specifically demonstrate the impact of the delay on your schedule; and
 - c. State the number or estimated number of extension days requested. .
6. After receipt of a timely and properly completed request for a time extension, the City may as it deems appropriate:
 - a. grant a time extension for the entire length of the delay;
 - b. grant a time extension for a portion of the extent of the delay; or
 - c. deny the time extension.
7. If you do not agree with the City's decision on a claim for time extension, you may invoke the Disputes procedures under Article XX, "Claims and Disputes."

H. Suspension of Work

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

I. Liquidated Damages

1. If the Work is delayed, you are liable for liquidated damages for every day you fail to achieve the Substantial Completion Date (or any milestone completion date that provides for liquidated damages), but only if the delay is not the result of an excusable

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cause permitted under Section XI.G.2, "No Damages for Delay and Extensions of Time." The specific amount of liquidated damages for which you are liable is set forth in Book 2 of this Contract.

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

J. [This section deliberately omitted]

XII. MEETINGS

A. Pre-Construction Meeting

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

B. Weekly Review Meetings

1. The Commissioner may conduct weekly review meetings. At a minimum, your project manager and superintendent must attend. However, you must arrange for Subcontractors to attend the meetings if expressly requested by the Commissioner. The meetings may include the following:
 2. Review of Work progress since the previous weekly review meeting;
 3. Discussion of field observations, problems and decisions;
 4. Review of off-site fabrication problems and other problems affecting in the Contract Time;
 5. Review of equipment deliveries;
 6. Discussion of corrective measures and procedures to achieve the CPM Schedule;
 7. Review of submittal schedules and effect on the CPM Schedule;
 8. Review of proposed Contract changes and effect on the construction schedule;

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

C. Monthly Review Meetings

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

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

XIII. PAYMENTS

A. Contract Price

1. The "Contract Price" is the total dollar amount of your bid accepted by the City, including approved change orders. It includes all labor, equipment, materials, permits, licenses, fees, and taxes necessary to perform the Work. In the case of a lump sum Contract Price or lump sum line item, you must provide the Commissioner with a breakdown that includes a schedule of costs for the various parts of the Work included in the lump sum. The total of these costs must equal the lump sum Contract Price or lump sum line items, as applicable.
2. The breakdown must be submitted in such form and detail, and supported as to correctness by such data, as the Commissioner may direct. The City will make no payment to you until you have submitted the breakdown and the Schedule required by Article XI, "Schedule," and the Commissioner has approved them. The breakdown may be used for verifying monthly progress payments upon substantiation of the costs detailed and the progress of the Work.

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

B. Procedure for Monthly Payment Requests and Final Payment

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

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

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

C. Payment for Stored Material

- 1. Whether stored on- or off-the job site, the risk of loss for stored material will remain with you, and you must insure the stored materials against the risk of loss, theft or damage until its installment in the Work.
 - a. Payment for material stored on the job site will be 100% of a valid invoice less applicable retainage. No payment will be made for materials stored off the job site unless otherwise authorized by the Commissioner in accordance with Section XIII.C.3. If materials stored on the job site cannot be incorporated in the finished Work within a reasonable period of time you may include them in the monthly

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progress payment, but only if the following documents are submitted with the request for payment:

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

D. Retainage

1. Under § 2-92-250 of the Municipal Code, the City must retain 10% of each approved periodic payment estimate covering the first 50% of the Contract Price including approved change orders to date.

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2. Upon Final Completion and Acceptance of the Work and before the computation of the final quantities, the City may, in its sole discretion, release a portion of the retainage so that the amount retained by the City is not less than 3% of the Contract Price. The City may, at its sole discretion, decline to reduce the retainage held, and retains the right to increase the amount of the retainage withheld if the Commissioner and the Chief Procurement Officer consider it necessary.
3. Upon (a) Final Completion and Acceptance of the Work, (b) your compliance with this Contract's conditions for payment and performance of the Work covered by the Contract in accordance with the terms and conditions of the Contract and compliance with all other terms and conditions of the Contract, (c) payment to all Subcontractors, workers, employees, suppliers and material persons for Work performed and materials supplied, and (d) computation of the final quantities of Work, the retained amount, less any damages or other amounts that the Chief Procurement Officer determines should be deducted, will be paid to you as final payment.

E. Payments to Subcontractors

1. You must pay all Subcontractors and suppliers within 14 days of your receiving payment for that portion of the Work from the City, but only if and when the Subcontractor has satisfactorily completed its Work in accordance with the Contract.

F. Payments Withheld

1. The Commissioner may decline a request for payment if, in the Commissioner's sole opinion, the request for payment is not adequately supported. If you and the Commissioner cannot agree on a revised amount, the Commissioner must process the payment in the amount he deems appropriate.
2. The Commissioner may decline to process any payment or may rescind in whole or in part any approval previously made to the extent that may be necessary in his sole opinion because of any failure to perform any obligation under the Contract, including:
 - a. Failure or refusal to provide the City the required initial schedule for the Work or monthly schedule updates and obtain the City's approval for either or both;
 - b. Your failure to remedy defective Work;
 - c. Your failure to make payments to Subcontractors, or employees, or provide partial waivers of lien;
 - d. Your failure to maintain timely progress of the Work as stated in your schedule, or the City's determination that the Work will not be completed within the Contract Time, or your failure to carry out the Work in accordance with the Contract;
 - e. Failure to follow the City, State, Federal, or Contract safety and security requirements;
 - f. Failure to maintain insurance policies as required by the Contract and/or to provide to the Commissioner each evidence of insurance coverage, in the form of current certificates of insurance, as he or she may require;
 - g. Failure to comply with other requirements as referenced in the Contract;

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- h. Failure to provide certified payrolls or other documents required under Section XI.G, "No Damages for Delay and Extensions of Time."
 - i. Failure to provide material inspections as required by the Contract; and
 - j. Failure to provide Contract deliverables such as, accurate Record Drawings, record Shop Drawings, warranties, guarantees, manuals, etc.
3. Under § 2-92-270 of the Municipal Code, the Chief Procurement Officer may, in his sole discretion, direct that no further payments be made, or vouchers or estimates issued to you, if he determines that you have failed to pay any Subcontractor, employee or worker for Work performed under this Contract. Failure to submit "Status Report of MBE/WBE Subcontract Payment" or "Certified Statement" as required under Section XIII.B. may result in a determination that you have failed to pay your Subcontractor(s). The City may withhold payment until you demonstrate, to the satisfaction of the Chief Procurement Officer, that payments to the Subcontractors, employees or workers have been made in full.

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

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

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

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

6. Provisions Relating to Liens

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

If any of Subcontractors, employees, officials, agents, or any other person directly or indirectly acting for, through, or on their behalf files or maintains a lien or claim under the Illinois Mechanic's Lien Act, 770 ILCS 60/23, *et seq.*, against public funds or against any monies due or to become due to Contractor on account of any Work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Project, Contractor must cause such liens and claims to be satisfied, removed, or discharged within 30 days from the date of filing. The City may extend the 30 day period if (i) the City determines that the lien claim cannot be so satisfied, removed, or discharged in such period and (ii) Contractor, in the City's sole determination, is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged. The City has the right, in addition to all other rights and remedies provided under this Contract or by law, to cause such liens or claims to be satisfied, removed, or discharged by any means at Contractor's sole cost, such cost to include reasonable legal fees.

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

G. Payment for Changes

1. Payment for Changes. The amount to be paid by the City for changes (either additions, deletions or revisions) in the Work or directions to change the Contract Time (as a result of delay claims, acceleration, or other reason), will be made in accordance with Sections XIII.G.1.a through XIII.G.1.f below. Claims procedures are set forth in Article XX, "Claims and Disputes."
 - a. **Unit Price Basis.** Should the changes in the plans result in an increase or decrease in the quantities of unit priced Work to be performed, you will accept payment as follows:
 - (1) All increases in the Work of the type that appears in the Contract as unit price items will, except as provided in Section XIII.G.1.b., "Proposal Basis," be paid for at the Contract unit bid prices. Decreases in quantities included in the Contract will be deducted from the Contract value at the unit bid prices. No allowances will be made for delays or anticipated profits.

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- (2) Quantities in excess of 125% of the bid quantities, when the total dollar value of the unit price item (including the original estimated quantities) exceeds 5% of the original Contract Price, will be paid for at a negotiated unit price based on costs that are demonstrated by you and agreed to by the Commissioner, subject to the approval of the Chief Procurement Officer. The negotiated unit price can be higher or lower than the bid unit price. Quantities in excess of 125% of the bid quantities, when the total dollar value on any unit price item (including the original estimated quantities) does not exceed 5% of the original Contract Price, will be paid at the bid unit price.
 - (3) If the Commissioner and you are unable to agree on a negotiated unit price, the Commissioner will determine a unit price, prepare a Contract Modification with the Work so priced, that you will sign. You may, however, timely dispute the amount of the unit price to the Chief Procurement Officer under Article XX, "Claims and Disputes." This is the only Contract Modification in which the release language required by Section XIV.D., "Contractor's Release," will not be included.
 - (4) For water main term agreement projects, XIII.G.1.a.(2) does not apply.
- b. **Proposal Basis.** If there are no unit prices for the changed Work, the payment may be based upon a price agreed to by the City and you. The proposal submitted will be a starting point for negotiation between the City and you. You must submit any proposal for consideration for changed Work in writing, breaking down the Work to be done into segments of cost as follows:
- (1) **Labor.** For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence. You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work. An amount not to exceed 30% of XIII.G.1.a.(1) below and an amount not to exceed 10% of XIII.G.1.a.(2) below will also be paid to you.
 - (2) **Insurance and Payroll Taxes.** Cost for property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions and social security taxes on the extra Work, to which an amount not to exceed 10% of the cost of these items will be added. You must furnish satisfactory evidence of the rates paid for the insurance and taxes.
 - (3) **Materials.** For materials accepted by the Commissioner and used as an integral part of finished Work, you will receive the actual costs of the materials delivered on the job site, including transportation charges that you paid (exclusive of machinery rentals as set forth below), as shown by original receipted bills, to which 15% will be added to the first \$10,000 and 10% for any amounts over \$10,000.

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- (4) Equipment. Number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Schedule of Average Equipment Ownership Expense With Operating Cost" as issued by IDOT, or in the AED Compilation of Rental Rates if equipment is to be rented, for the period that the machinery and equipment are to be used on the Work, to which no percent will be added. Where machinery and equipment are not listed in these schedules, then the rates will be determined by the Commissioner after reviewing all of your available records or other information concerning the expense of operating that type of equipment.
 - (5) Cost for Increase in Performance and Payment Bond. You will furnish the Commissioner written documentation from the surety of the rate applicable for additional bonding for this Contract. This rate will be applied to all the changes increasing or decreasing the Contract Price. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the surety, a percentage of the total change, as determined by the Commissioner, will be added or subtracted to cover the increase or decrease of the cost of the bond.
 - (6) When Work is to be performed by a Subcontractor, the proposal may include as administrative costs for you an amount not to exceed 5% of the first \$10,000.00 and 1% of any amount over \$10,000.00 of the total approved costs of the Work. The Subcontractor, however, is not allowed any additional markup if it sublets its Work. The use of a Subcontractor requires the approval of the Chief Procurement Officer. All subcontracted costs must be supported by proposals from the Subcontractors performing the Work. The Subcontractor's proposal must be broken down into its various parts of Work as described in items XIII.G.1.b.(1) through XIII.G.1.b.(4) above, or as required by the Commissioner.
- c. **Time and Material Basis.** If the Commissioner and you cannot agree on a price based on a proposal, the Work will be paid for on a time and material basis. Work that is done on a time and material basis will be paid for as follows:
- (1) Labor. For all hourly wage labor and hourly wage foremen in direct charge of the specific operations, you will receive the prevailing rate of wage for every hour that the labor and foremen are actually engaged in the Work. No additional allowance or payment will be made for general superintendence.
 - (2) You will receive the actual costs paid to, or in behalf of, workers for health and welfare benefits, pension fund benefits or other benefits, when the amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Work.
 - (3) An amount not to exceed 30% of XIII.G.1.c.(1) above and an amount not to exceed 10% of XIII.G.1.c.(2) above will also be paid to you.
 - (4) No payment will be made for labor performed on a time and material basis until you have furnished the Commissioner with itemized statements of the labor cost as follows.
 - (a) Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.

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

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Commissioner after reviewing all your available records or other information concerning the expense of operating that type of equipment. Where idle time for equipment is authorized by the Commissioner, it will be paid at a rate not to exceed 50% of the rates described above.

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

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- (b) An amount equal to 7% of the sum of the premium portion of the work plus taxes will also be paid to you to cover job site general conditions, overhead, and profit. All indirect costs are considered part of the overhead, including supervision, engineering, and other technical personnel.
 - (c) If you enter into a subcontract, you will be allowed an additional 2% of the Subcontractor's premium time billing to cover your supervisory and related expense on subcontract operations. The Subcontractor is not allowed the additional 2% if it sublets its Work.
 - (d) You must keep daily work reports for the premium time hours signed by you and the Commissioner. The reports must indicate the time of day when the Work was performed and wage rate differential that will be charged. Billings must reflect hours reported on daily work reports.
- d. **Changes on Lump Sum Contracts or Lump Sum Items in Unit Priced Contracts.** All increases or decreases in the Work that is listed in the approved schedule of values will be priced, for the purpose of any change, based on the amounts stated for the Work in the approved schedule of values.
- e. All invoices for changed work. You must submit all invoices for changed work within 45 days following completion of the changed work. Failure to provide a complete invoice for the changed work within that period, will authorize the Commissioner, subject to the approval of the Chief Procurement Officer, to determine the final amount for the Contract Modification that may be awarded without your signature.
- f. Miscellaneous.
- (1) For the purposes of this Section, any Subcontractor that employs field labor and performs Contract Work on the job site is defined as a "Field Labor Subcontractor." (This definition excludes suppliers/deliverers of materials.)
 - (2) When the extra Work involves only supply of material without any field labor at the job site, the supplier, for the purposes of this Section, will be considered a "Materials Subcontractor" and the mark up specified in Section XIII.G.1.c (6), "Materials," will apply.
 - (3) Expenses incurred by the City. Upon written request of the Commissioner, you will pay the bills related to the Work that are the responsibility of the City. You will be reimbursed for the actual amount paid out to which will be added a markup as specified in Section XIII.G.1.c above.

H. Night, Sunday and Holiday Work

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

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I. Acceleration / Recovery

1. If progress falls behind the approved schedule or if you fail to meet any milestone on the approved schedule by more than 5 days or as indicated in Book 3, the Commissioner may direct and authorize you, in writing, to perform premium time work as indicated in TIME OF COMPLETION in the Proposal section of the specifications. The City will pay you NO additional compensation for such premium time work, and the cost incurred for inspection and testing during the premium time work will be considered as "extra" inspection, for which you must reimburse the City as described in Section XV.C, "Materials and Equipment Testing and Inspection."
2. If conditions are encountered where you are specifically directed and authorized in writing by the Commissioner to perform premium time work, on the original Contract, to advance an already established completion date of an event or the project, or project milestone, you will be compensated in accordance with Section XIII.G.1.c (15).
3. When such premium time Work is performed by an approved Subcontractor, you will receive a markup as specified in Section XIII.G.1.c (15).

J. Payroll Canvass Reports

1. You must submit to the Commissioner with each pay request a Payroll Canvass Reports (PCR) on Exhibits B and C, included in Book 2. You must submit the PCRs to indicate compliance with both your "Award Criteria Determination" commitments made for each trade in Book 2 and the Chicago Residency Ordinance requirements. A pay period canvass report must be prepared separately by you and each of your Subcontractors on Exhibit B to indicate, on a weekly basis, hours of each trade utilized during each pay period by you and your Subcontractors on the project. A combined Payroll Canvass Summary Report must be prepared by you on Exhibit C to indicate accumulated hours of each trade you and all of your Subcontractors have utilized, to date, on the Project. You are also responsible for the accuracy of information and all arithmetical calculations made in the Payroll Canvass Reports.
2. You must submit within five days after the award of the Contract Exhibit A, Anticipated Workforce Projection Form, included in the Contract, to the Chief Procurement Officer.

K. ELECTRONIC ORDERING AND INVOICES

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

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written notice to the Contractor, the Chief Procurement Officer may deem any or all of the electronic ordering and invoice documents the official documents and/or eliminate the requirement for paper ordering and invoice documents.

XIV. CHANGES IN THE WORK

A. City's Right to Change Work

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

B. Contractor's Request

1. You must submit your claim for adjustment of the Contract Price and/or the Contract Time for the revised Work in accordance with the procedures under Section XX.B and the payment provisions under Section XIII.G.

C. Contract Modification

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

D. Contractor's Release

1. All Contract Modifications constitute a full release of the City from any liability for any additional compensation or extension of time arising or resulting from the Work performed pursuant to the Contract Modification. By executing a Contract Modification, you accept the compensation and/or time extension provided in it in full accord and satisfaction for that Contract Modification, and you expressly waive, release and relinquish all additional claims and demands relating to or arising out of the matters covered by that Contract Modification, including direct or indirect cost, profit, or damages related to disruptions.

E. Performance of Changed Work

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

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F. Change Claims and Disputes

1. The procedures set forth in Article XX, "Claims and Disputes," apply.

XV. TESTING & INSPECTION

A. Material, Inspection and Responsibility

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

B. Inspection of the Work

1. All materials and equipment and each part or detail of the Work are subject at all times to inspection by the Commissioner or the Commissioner's authorized representatives. You are held strictly to the requirements of the Contract with respect to quality of materials, workmanship and the diligent execution of the Contract. The inspection may include mill, plant, shop and field inspection of any material or equipment furnished and any installation and construction under the Contract. You must allow the Commissioner and his representatives access to all parts of the Work and furnish such information and assistance as he may require to make a complete and detailed inspection.
2. All materials used must be inspected, tested and approved by the Commissioner before being incorporated in the Work. All tests performed by or at the direction of the Commissioner under this Contract are to verify that the materials you are providing meet the Contract requirements. You, at your own expense, may perform or have others perform similar tests for the purpose of maintaining the quality of the material being provided. Payment will be solely on the results of the tests performed by the Commissioner. Payment will not be made for uninspected or unauthorized use of materials incorporated into the Work.
3. You must remove or uncover such portions of the finished Work as the Commissioner may direct before acceptance. After the examination, you must restore the portion of the Work to the standard required by the Contract. If the Work thus exposed or examined proves acceptable, the City will pay the expenses of uncovering, removing and/or replacing the parts as extra work, but if the Work so exposed or examined is unacceptable, you must bear the expense of uncovering, removing and/or replacing of it in accordance with the Contract.
4. Except as may be otherwise specified in other sections of the Contract, the Commissioner will make final inspection of all Work included in the Contract as soon as possible after you notify him that the Work is substantially completed and ready for acceptance. If the Work is not acceptable to the Commissioner at the time of the

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inspection, he or she will inform you as to the particular defects to be remedied before the Work is accepted as substantially complete.

C. Materials and Equipment Testing and Inspection

1. You must provide the Commissioner sufficient notice of placing orders to permit tests to be completed before the materials are incorporated into the Work. You must afford such facilities as the Commissioner may require for collecting and forwarding Samples and making inspections and test. All Samples must be furnished without charge to the Commissioner. You must not make use of or incorporate into the Work the materials represented by the Samples until tests have been made and the materials have been found to be in accordance with the requirements of the Contract.
2. For materials that are integral parts of machinery or equipment or of parts of equipment that you or your Subcontractor normally stock, you must furnish the original and one copy of certified tests made at the time of production. You will keep the original and the Commissioner will retain the copy.
3. You must assure that the Commissioner has free entry, at all times while Work is being performed, to all parts of the manufacturer's works that concern the manufacture of the material or equipment ordered. The Commissioner must be permitted to examine all components and subassemblies. Assemblies and parts must be numbered for identification. You must provide the Commissioner with a detailed production schedule before the first inspection. After review of the schedule, the Commissioner will inform you of the methods, extent of inspection, facilities desired and date of inspection. You will afford the Commissioner without charge, all facilities necessary to determine that the material or equipment furnished are in accordance with the Contract. Test and inspection may be at the place of manufacture before shipment.
4. If for any reason, the City elects not to make the tests, the Commissioner may direct you to make the necessary tests. You must furnish a certification of the ordered tests after completion. The Commissioner reserves the right to inspect and reject all materials or equipment that were previously inspected and accepted at the place of manufacture or source of supply, after they were delivered to the Work site, if the materials or equipment do not meet the requirements of the Contract.
5. When an inspection trip is terminated due to insufficient materials, unacceptable quality, Contractor labor problems, or Contractor equipment problems, you must pay the City its costs for any additional inspection trip.
6. The Contract documents may include the cost of travel and living expenses for a specific number of City employees and/or other persons for a specific test. The travel and living expenses for the additional City employees or additional person(s) will not be a cost to you. The manufacturer or you must furnish a certification of the ordered tests after completion. The Commissioner reserves the right to reinspect and reject all materials or equipment that have been previously inspected and accepted at the place of manufacture or source of supply, after they have been delivered to the site if the materials or equipment do not meet the requirements of the Contract.
7. Unless otherwise provided in detailed specifications, all materials will be sampled and tested in accordance with the latest published standards and methods of the American

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Society for Testing and Materials (ASTM) and any revisions of them. If there are no ASTM standards that apply, applicable standard methods of other recognized standardizing agencies will be used. You must provide the name and qualifications of any such standardizing agency to the Commissioner for review and approval.

D. Testing Laboratory Labels

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

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

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

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

XVI. CONTRACTOR PRACTICES AT SITE

A. Cooperation Among Contractors

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

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B. Protection of Persons and Property

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

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

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

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

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

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

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

Materials and equipment necessary for the performance of the Work may only be placed, stored or allowed to occupy any space in public streets or alleys upon the written consent of the Commissioner. It is the City's intent that the operations under this Contract are conducted as far as practicable without interference with the public use of streets and alleys. All materials or equipment used in the performance of the Work must

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be placed so as not to impede traffic on streets and alleys adjacent to the site of the Work, and to allow free access to all fire hydrants, water valves and manholes that are a part of electric, telephone and telegraph conduit lines, fire alarms and police call boxes in the vicinity.

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

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

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

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

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

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

3. Utilities Outside the Limits of the Work. You must protect and maintain City-owned water lines, sewers, connections and appurtenances and all City-owned electrical

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conduits, cables, vaults and appurtenances that are located entirely outside the limits of the Work in a satisfactory manner until the completion of the Work. Whenever in the performance of the Work it is necessary, because of the nature of the Work or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair such City-owned structures located entirely outside of the excavations, you must notify the appropriate City department to perform the Work, and must cooperate with the department in preserving service. You must reimburse the appropriate City department for the cost of performing the Work at no additional cost to the City under the terms of this Contract.

4. Utility Relocation and Continuance of Service Plan. You must prepare a Utility Relocation and Continuance of Service Plan, identifying procedures, locations, time frames and affected agencies and private owners. The Plan must be submitted to the Commissioner for review within 14 days after the Notice to Proceed.
5. Cooperation with Utilities. You must cooperate with all utility companies involved in connection with the removal, temporary relocation, reconstruction, or abandonment by these agencies of all services or facilities owned or operated by them within the limits of the Work.
6. Work Performed by Others. The Work must be performed with a minimum of interference to street traffic in the area. You must coordinate your Work with that of other City contractors, with contractors employed by adjacent property owners, and with contractors employed by any other party or parties for work on utilities to insure the best progress of the Work as a whole.
7. Preservation and Protection of City Standard Bench Monuments and Survey Controls. You are responsible for the preservation and protection of all City Standard Bench Monuments, in accordance with the provisions of § 10-4-220 of the Municipal Code and Article 105.09 of the Standard Specifications, and as directed by the Commissioner. Any survey control point that you disturb or remove you must replace or reestablish to the satisfaction of the Commissioner, at no additional cost to the City. **DAMAGE TO ANY OF THE CITY STANDARD BENCH MONUMENTS WILL RESULT IN YOUR BEING PROSECUTED TO THE FULL MEASURE OF THE LAW.** The Department of Water Management will pursue the matter of compensation for damages incurred by the City resulting from your actions or your failure to act during the execution of Work on this project.
8. Protection of Streets and Traffic. You must provide all necessary barricades, signs, flags, lights and reflectors. You must assure that vehicular and pedestrian traffic on all streets, including adjacent streets, bridges, overpass structures and ramps is maintained during the performance of the Work in accordance with the requirements of the Contract.
9. Temporary Restoration of Trench Cuts. Failure to maintain the temporary restoration of trench cuts, which causes the surrounding work area to be in an impassable and/or hazardous condition thereby creating undue inconvenience and danger to area residents is an event of default under this Contract.
10. Temporary Barriers, Signs, Lights and Flaggers. You must furnish, relocate and remove portable barricades and lights, collision protection, temporary signs (including traffic and project signs) and supports as directed by the Commissioner; and furnishing all

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necessary flaggers and other protection necessary for the maintenance of traffic flow in a safe and orderly fashion, as required by Article 107.14 of the Standard Specifications, except as otherwise specified in the Contract.

You must maintain, repair or replace all damaged or destroyed appurtenances referenced in the immediately preceding paragraph throughout the life of the Contract. Maintenance includes cleaning of the barricades and traffic signs by means of clean water. Flaggers must be certified by IDOT per Article 701.04(c)(4) of the SSRBC.

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

11. Historical and Scientific Specimens. You must preserve and deliver to the Commissioner any specimens of historical or scientific value encountered in the Work, as directed by the Commissioner.
12. Use of Chemicals, Admixtures, Etc. Safe for Drinking Water. All chemicals, protective paints and coatings, concrete coatings and admixtures must be approved by the USEPA (under provisions of the Safe Drinking Water Act, the Toxic Substance Control Act or the Federal Insecticide, Fungicide and Rodenticide Act) or, if those provisions do not apply, then those of the National Sanitation Foundation.

C. Protection of Streets, Alleys and Public Grounds

1. When excavating or occupying any street, alley or public grounds of the City, you must erect and maintain temporary barriers and, during the night time, lights that will effectively prevent accidents or damage to life, limb or property in consequence of the excavation or occupation of the street, alley or public grounds. You are liable for all damages as a result of the excavation or occupation of any street, alley or public grounds, or by the carelessness of you, your subcontractors, agents, employees or workers and must indemnify and hold harmless the City against all judgments rendered against it by reason thereof.
2. Construction Period Traffic Management Plan. You must prepare a Construction Period Traffic Management Plan consistent with the requirements of the Contract. The Plan must be submitted to the Commissioner for review within 14 days after award of the Contract. You must comply with all applicable Federal, state and local requirements and coordinate with Chicago Department of Transportation, Bureau of Traffic and Illinois Department of Transportation. You must also comply with the following requirements:
 - a. Construction staging segments must be kept as short as feasible;
 - b. Lane closure must be kept to a minimum, and at least one lane must remain open to vehicular traffic;
 - c. Intersections must remain open to traffic in both directions at all times;
 - d. Detours must be provided in streets as necessary and approved by the Commissioner;
 - e. Signage plans must be developed and implemented for all approved detours;
 - f. Coordinate adjustments required for traffic signals; and

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g. Allow for emergency access at all times.

D. Protection of Existing Trees in the Right of Way

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

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

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

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

Trees located in Tree Pits: Where trees are located within Tree Pits, the temporary fencing should be installed at a minimum distance of the inside dimension of the Tree Pit opening with one stake at each corner of the opening. (See Illustration 1.)

Trees located in Parkways or Boulevards: (See Illustration 2.)

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

(Example: 6" Tree in a 6' parkway as measured from back of curb to sidewalk. The dimension of the protection fencing would be 1.2m x 3m (4' x 10') with tree in the center).

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Note: Larger grass parkways (>12') may allow for a ten foot by ten foot (10' x 10'). Thus, the dimension bordered by the sidewalk or curb would not affect fencing distance.

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

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

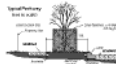
[ILLUSTRATIONS FOLLOW]

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ILLUSTRATION 1:



ILLUSTRATION 2:



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E. Care of Existing Structures and Property

1. Property Access Maintenance Plan. You must prepare a Property Access Maintenance Plan consistent with the requirements of the Contract. The plan must be submitted to the Commissioner for review within 14 days after award of the Contract. You must comply with all applicable Federal, state, and local requirements. You must also comply with the following requirements:
 - a. Maintain vehicle and pedestrian access to properties;
 - b. Maintain pedestrian access on both sides of all streets;
 - c. Provide access walkways to all buildings and businesses;
 - d. Sidewalks must remain open to the maximum extent possible;
 - e. Provide temporary relocation of access, where required;
 - f. Provide advisory and temporary signs for pedestrian and vehicle access changes and reroutings; and
 - g. Coordinate delivery locations and timing.
2. Before doing any Work adjacent to or on the site of any buildings or other structures adjoining or in the line of the Work to be performed under the Contract, you must supply written notice of it to the owner or owners that the Work is to be done, and must cooperate with the owner(s) in the maintaining, removing, relocating, rearranging or adjusting wherever necessary, of all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment, or other appliances and structures located in any portion of the streets, public areas, highways and easements to be occupied or used during the prosecution of the Work.
3. Wherever in the performance of the Work it is necessary to remove, reconstruct, relocate, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewers connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the Work as shown on the plans, or ordered by the Commissioner you must perform the Work necessary to remove, reconstruct, relocate, rearrange, adjust or repair those structures and appurtenances, unless otherwise noted on the plans.
 - a. You must minimize interference with the normal conduct of business in or around the portions of the buildings or structures in use.
 - b. The building or structures may be in full time use and operation and will continue in normal use during performance of the Work. Building facilities, including heating, ventilation, and air conditioning, lighting and plumbing, will not be interrupted in the occupied areas, except as required for making connections to power sources as specified below.

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- c. You will serve written notification to the Commissioner requesting any anticipated interruption in facilities at least two weeks before disruption of services. You must provide any temporary facilities deemed necessary by the Commissioner due to a disruption of services. The Commissioner, in his sole discretion, will determine the procedures, times of day and dates you may accomplish the Work and may reject or modify your request.
 - d. Storage of all material and/or equipment must be in areas approved by the Commissioner, in a manner to minimize interference with the normal conduct of business in or around the occupied portions of the building and vehicular areas.
4. You must not perform Work on City-owned water mains, connections and appurtenances or on any City-owned electrical conduits, cables, vaults and appurtenances unless the City has abandoned the structure and the Commissioner has authorized the Work or the Work is included in the Contract. But, you must adjust City-owned water manholes and electric manholes that are shown as "to be adjusted" on the plans.
- a. You must protect and maintain in a satisfactory manner City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances that are located entirely outside of the neat lines of the excavation as shown on the plans or as ordered by the Commissioner, until the completion of the Work under the Contract. Whenever in the performance of the Work under the Contract it becomes necessary because of the nature of the Work required by the Contract or because of your method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair those City-owned structures located entirely outside of the excavations, you must notify the appropriate City Department to perform the Work, and must cooperate with the Department in preserving service in or through them. You must reimburse the appropriate City Department for the cost of performing the Work, and the cost must be included in the various Contract prices.
 - b. The City will support, protect and maintain or remove, replace, relocate, rearrange, adjust or repair, both inside and outside of the excavations, all City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances, any part of which are located inside of the neat lines of the excavations as shown on the plans or ordered by the Commissioner, without cost to you. But you must adjust those City-owned water manholes and electric manholes that are shown as "to be adjusted" on the plans. Whenever in the performance of the Work under the Contract it becomes necessary to support, protect, maintain, remove, replace, relocate, rearrange, adjust or repair such City-owned structures any part of which is located inside of the excavations, you must notify the appropriate City department to perform the Work and must cooperate with the department in preserving service in or through them.
 - c. With the exception of the City-owned water mains, connections and appurtenances and the City-owned electric conduits, cables, vaults and appurtenances described above, and with the exception of City-owned structures that are to be removed or otherwise Worked upon as part of the requirements of the Contract, you must support, protect, maintain or relocate and rebuild all poles, trees, shrubbery, fences, sewers, pipes, conduits, cables, wires, manholes, tunnels, buildings, subways and

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other City-owned structures that pass through and are located within the excavations or that are adjacent to the Work to be constructed under the Contract during the construction and until the completion of the Work under the Contract.

5. You must notify and cooperate with the owner (s) of all basements of buildings, subsidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment or other appliances or structures located in any portion of the streets, public areas, highways and easements that are to be occupied or used during the construction of the Work specified under the Contract in maintaining, removing, relocating, rearranging or adjusting wherever necessary.
 - a. Wherever in the performance of the Work specified under the Contract it becomes necessary to remove, replace, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances by reason of the fact that the structures and appurtenances pass through or are located within the limits of the excavations as shown on the plans or ordered by the Commissioner, you must perform the Work necessary to remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances. The cost of performing the Work must be included in the Contract price.
 - b. Wherever in the performance of the work specified under the Contract it becomes necessary to support and maintain City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances or wherever it becomes necessary as a result of your methods of construction during the Work under the Contract, to remove, replace, relocate, rearrange, adjust, or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances (other than those specified in the last preceding paragraph) you must perform the Work necessary to support, maintain, remove, replace, relocate, rearrange, adjust or repair the structures and appurtenances, and you must bear the cost of the Work without any additional compensation for it.
 - c. It is the intention of the specifications that you include in the appropriate Contract Price or prices, all necessary cost and expense of supporting, maintaining, removing, replacing, relocating, rearranging, adjusting or repairing all City-owned appliances and structures (other than City-owned water mains, connection and appurtenances and City-owned electrical conduits, cables, vaults and appurtenances described in Section XVI.E.4.b), encountered in or affected by the Work, and that you must also include in the price or prices all necessary cost and expense of removing structures that have been or will be abandoned by their owner or owners and that are necessary to be removed in order to construct work under the Contract, but you must not include in the price or prices the cost or expense of supporting, maintaining, moving, replacing, relocating, rearranging, adjusting or repairing those appliances or structures that are not owned by the City and are not abandoned by their owner or owners, except as may be otherwise specified below in this Section.
6. You must take all reasonable precautions for the protection of buildings, railroad tracks, street railway tracks and appurtenances, and other appliances and structures not owned by the City.

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7. You must determine the methods to be employed, the procedure to be followed, the equipment, plant, falsework, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract and the approval of the Commissioner. Only adequate and safe procedures, methods, structures and equipment must be used.
8. You must provide drawings and calculations for all equipment, falsework, shoring, bracing and other temporary structures required for the Work, designed, signed and sealed by an Illinois licensed structural engineer. You must submit copies of all such drawings and calculations to the Commissioner for information only.
9. Field Check of Dimensions, Cutting and Patching. Where the Work connects to existing structures or appurtenances, you must take complete field measurements affecting all Work under this Contract and are solely responsible for the proper fit between the Work and existing structures or appurtenances. You must perform all cutting, patching, or fitting of Work that may be required to properly fit together the several parts of the Work and the existing structures or appurtenances.
10. Contractor's Layout of the Work. You are responsible for the correct lay-out and accurate fitting of all parts of the Work. You must furnish at your own expense all labor, materials and other expenses necessary for, or incidental to, the setting and maintaining of lines and grades (exclusive of the Work of establishing the original reference base line and bench marks that will be performed by the City). Unless noted otherwise in Book 3, the City will not make separate payment to you for the cost of any of the Work specified in this Contract. The cost is included in the Contract unit or lump sum prices.
11. Salvage of Materials. If and whenever City- or State-owned property such as valves, cast iron manholes, catch basin frames and covers, inlet boxes and grates, or any other appurtenance are to be removed and are not to be reused in the Work, you must securely store them at a suitable place on the job Site for possible use by the City or State respectively (unless otherwise stipulated). You must take care to prevent damage in your handling of these appurtenances. You must deliver all items identified by the City for reuse to a location designated by the Commissioner and must legally dispose of the remaining items.
12. Wherever basements of buildings, subsidewalk vaults, tunnels, sewers, water, gas, telephone, telegraph, electric or other pipes, conduits, cables, wires, manholes, vaults, steam and street railway tracks or other similar structures and appliances not owned by the City are in or cross the excavations for structures to be built under this Contract, you must notify the owner or owners of the structures and appliances to support, move, rearrange or abandon them, and cooperate with the owner or owners of the structures and appliances in preserving the service or services provided by the structures and appliances, except as may be otherwise specified or provided in the Contract. If you have complied with the above requirements and has been notified by the owner or owners of the structures and appliances that any of them have been abandoned, or lacking such notice, if you have made all investigations and has found that any of the above structures or appliances have been abandoned by their owners and if the removal of any such abandoned structure or appliance is necessary in order to construct the Work, you must remove them at no additional cost to the City.

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

F. Precautions and Safety

1. You must take any precautions that may be necessary to render all portions of the Work secure in every respect, to decrease the liability of accidents from any cause and to avoid contingencies that are liable to delay the completion of the Work. You must furnish and install, subject to the approval of the Commissioner, all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of engineers and inspectors during the performance of the Work. You are required to conduct your Work so as not to unnecessarily obstruct the activities of other contractors who also may be engaged in work on this or any other project.
2. Although the Commissioner may observe the performance of the Work and reserves the right to give you opinions and suggestions about safety defects and deficiencies, the City is not responsible for any unsafe working conditions. The Commissioner's suggestions on safety, or lack of it, will in no way relieve you of your responsibility for safety on the Work site. You have sole responsibility for safety and the obligation to immediately notify the Commissioner of all accidents.

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3. Precautions must be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes must be observed.
4. You must provide completely equipped first aid kits readily accessible at all times on the Work site. You must designate an appropriately trained individual on each shift to be in charge of first aid.
5. You must provide at appropriate locations fire extinguishers or other fire protection equipment that comply in all respects with the Municipal Code and NFPA standards. You must maintain this equipment in proper operating condition at all times and must cause the equipment to be inspected by all appropriate agencies as required by law, but in no event less than monthly. You must comply with the Municipal Code requirements on the use of standpipes, hoses and other fire protection equipment.
6. Only such materials and equipment as are necessary for the construction of the Work under this Contract must be placed, stored or allowed to occupy any such space at the site of the Work. Not more than one day's supply of flammable liquids, including oil, gasoline, paint, or solvent is permitted to be kept on hand at any one time. If gasoline, flammable oils, other highly combustible materials or compressed gas cylinders are to be stored at the site, they must be stored in a secure manner, in compliance with all applicable laws, ordinances and regulations, and all storage places must be clearly marked. The written consent of the Commissioner is required for such storage. That consent in no way limits your liability for the materials.
7. You must prohibit all lighting of fires about the premises and all smoking in restricted areas where posted with "NO SMOKING" signs, and you must diligently enforce this prohibition. You must furnish and post "NO SMOKING" signs. You must not permit any debris or waste materials to be burned at the Work site.
8. Construction Areas. All personnel employed by you or your Subcontractors and all visitors whenever entering the job site must be required to wear approved personal protection equipment required for that area. Machinery, equipment and all hazards must be guarded or eliminated in accordance with safety provisions of the "Manual of Accident Prevention in Construction," published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

G. Health, Safety and Sanitation

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

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2. Snow and Ice Removal. You must remove snow and ice that may impair progress of Work, be detrimental to workers, or impair trucking to and from points of delivery at the Work site.
3. Glass Breakage. You must replace all glass broken or damaged during construction at no additional cost to the City. You must promptly remove all broken glass from the Work site.
4. Noise and Vibration Control. All equipment, vehicles, and Work under this Contract must be conducted in accordance with the City Building Code, Chapter 11-4 of the Municipal Code "Environmental Protection and Control," Article VII - *Noise and Vibration Control*, so as to cause a minimum of noise, vibration and inconvenience to the activities of the occupants of property and buildings in the vicinity of the Work. When the Commissioner, in his sole discretion, determines that your operations constitute a nuisance, you must immediately proceed to conduct your operations in a manner that abates the nuisance. You must provide all measures, including engine and exhaust mufflers, acoustic casing enclosures, maintaining equipment, or physical barriers along the edges of the construction zone, required to minimize noise and vibration. Noise and vibration levels may be monitored by the Commissioner.
5. Health and Safety. You must comply with the requirements of the Illinois Health and Safety Act, 820 ILCS 225/.01 *et seq.*, and the rules and regulations promulgated under it by the Director of Labor for the State of Illinois, which are on file with the Illinois Secretary of State.
6. Whenever a Federal OSHA Compliance Officer arrives at the work site, you must notify the Commissioner immediately. At the conclusion of the inspection, any findings are reported to the Commissioner. Copies of any citations issued and related documents must be submitted to the Commissioner.
7. You must maintain the following records and make available to the Commissioner for review: (i) all records required by OSHA, including the accident log, Fed/OSHA #200, and posting of the prescribed OSHA poster; (ii) log of safety activities, accident investigation, employee instruction, training, tool-box meetings, and any other pertinent information; and (iii) Material Safety Data Sheets (MSDS) as required for each material you have used at the Work site.
8. You must enforce among your employees such regulations in regard to cleanliness and the disposal of garbage and wastes that are necessary for their health and tend to prevent the inception and spread of contagious and infectious disease among them. You must provide an ample supply of suitable, pure drinking water, and must take such means as the Commissioner may direct to effectively prevent the creation of a nuisance on any part of the Work site or adjacent streets or property. You must construct and maintain necessary sanitary conveniences for the use of the laborers on the Work, properly secluded from public observation, in such manner and at such points as be approved, and their use must be strictly enforced. Whenever manholes have been used for sanitary purposes, they must be thoroughly flushed and cleaned when no longer needed.
9. The manner of disposing of waste must be such that all waste is disposed of without creating a public nuisance or health hazard and in accordance with Illinois Department of

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Public Health Circular No. 815, Educational Health Circular No. 4.001, and all Illinois Environmental Protection Agency rules and regulations.

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

H. Hazardous Operations and Security

1. During construction, all cutting or welding operations must be carried out with all precautions taken to prevent fires resulting from sparks or hot slag. Extreme care must be exercised to determine that sparks or embers do not fall into any combustible materials, even if such material is stored on lower floors. Sheet metal wind screens must be provided around the lead-melting furnaces whether the Work site is enclosed or not. Portable fire extinguishers must be provided at and below all locations where cutting or welding or melting operations are being performed or, if those operations are extensive, a hose from the stand pipe system or fire hydrant must be placed nearby. You must obtain special permission from the Commissioner of Water and pay all associated connection fees.
2. No welding, flame cutting, or other operations involving use of flame, arcs, or sparking devices, will be allowed without adequate protection. All combustible or flammable material must be removed from the immediate working area. If removal is impossible, flammable or combustible materials must be protected with fire blankets or suitable non-combustible shields to prevent sparks, flames or hot metal from reaching flammable or combustible materials. You must provide necessary personnel and equipment to control incipient fires resulting from welding, flame cutting, or other sources involving use of flame, arcs, or sparking devices.
3. You must immediately report any concentration of gas fumes, and you are responsible for clearing the area and notifying the Commissioner and the appropriate utility company. All operations in the area must be suspended until the source of the fumes has been located and corrected.
4. You must arrange for the installation of necessary fire protection lines and equipment as required by the Chicago Fire Department and as necessary to properly protect the Work site. Permanent fire protection facilities may be used for this purpose as soon as they are installed, tested and approved by the Commissioner for temporary use.
5. Salamander heaters or similar forms of uncontrolled heaters must not be used except with the special written permission of the Commissioner and City fire marshal and then only when each salamander is maintained under constant supervision.
6. Gasoline must be kept in and handled from approved safety cans.
7. All tarpaulins used for any purpose must be made of fire, water and weather-resistant materials.
8. You must furnish such watchmen as may be necessary to protect the public and those who are at or in the vicinity of the Work under this Contract, and to protect all materials, tools, machinery and equipment and all Work you have performed.

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9. You must comply with all Federal and state and local occupational health and safety statutes, and any occupational health and safety standards promulgated thereunder; provide reasonable protection to the lives, health and safety of all persons employed under this Contract; furnish to all such persons a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm; keep all persons employed under this Contract informed of your protections and obligations under the statutes; and provide all persons employed under this Contract with information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms and emergency treatment. The Federal and state occupational health and safety statutes, and the rules and regulations promulgated thereunder, are considered part of this Contract as though fully set forth in this Contract.
10. You must provide safety instructions and training for all workers. You must conduct weekly craft safety meetings (tool-box type) of reasonable length as an effective means of communicating safety issues to workers. Reports containing tool box discussion topics must be signed-off by all attendees and must be submitted to the Commissioner.

I. Services and Use of Site

1. **Work Area.** After receipt of the Notice to Proceed, you must propose a suitable working area subject to approval by the Commissioner. You must secure the space at your own expense.
2. **Temporary Services and Utilities.** If specified in the Contract, you are responsible for arranging for and providing all general services and temporary facilities as specified in the Contract and as required for the proper and expeditious prosecution of the Work. You must pay all costs for those general services and temporary facilities. You must provide temporary connections for water, electricity and heat including installation, maintenance and removal of those facilities. You must pay the cost of all water, telephone, and electricity during the construction period.
 - a. **Water.** You must provide temporary water connections as required for drinking and construction purposes. The Commissioner reserves the right to regulate the use of water and may impose restriction on the use if you are using water carelessly. You must provide water and facilities for obtaining water for sanitary purposes, drinking, mixing concrete and for all other purposes at your expense. You are not permitted to obtain the water from the mains of the Chicago water system, except as may be provided in the Contract. Except with special permission from the Commissioner and the Department of Water, you must not make connections for water to the City's fire hydrants.
 - b. **Light and Power.** You must furnish the electricity and must furnish and install all wiring, electrical services, lighting units, insulated supports for wiring and all other electrical equipment together with all other incidental and collateral Work necessary for the furnishing of the temporary power and lighting facilities for the Work to be done under this Contract, all at no additional cost to the City. Electrical Work must be performed by a licensed electrician.

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- c. Temporary Heating During Construction. You must provide temporary closures or enclosures for all exterior door, window, roof or other types of exterior openings as required to provide protection from the elements during construction. It is your responsibility to keep water in pipes from freezing and to maintain temporary heat in areas where Work is being performed at not less than 50° F before plastering and painting and not less than 60° F after. The Heating period is from approximately October 1 to May 30 unless conditions warrant otherwise. You must furnish, install, operate and maintain all required temporary heating equipment, and must provide and pay all fuel costs.
3. Temporary Construction Facilities. Unless otherwise specified, you must provide and maintain the following temporary construction facilities throughout the construction period and remove them at the completion of the Work:
- a. Field Offices. Unless otherwise specified in Book 3, you must provide a temporary building or mobile type field office of such size and containing such equipment as you deem necessary to conduct the operations. The field office must be provided with a telephone for your superintendent and use by others during the entire period of construction. The telephone must be removed promptly upon Acceptance of the Work.
- Unless otherwise specified in Book 3, you must supply a field office for the Commissioner's consisting of a separate office facility. It must be of adequate size for efficient operations and be furnished with a desk, three chairs, 4-drawer file cabinet and a plan table. It must be equipped with electric lighting, heating, ventilating and cooling facilities. You must provide a separate telephone for the Commissioner's use.
- You must also provide and maintain in clean condition for the Commissioner's use, including toilet facilities, having a water closet and laboratory fixture connected to sanitary sewer and water service. Temporary toilet facilities must be located in the Commissioner's field office and comply with City and State regulations relating to health and sanitation. The toilet facility must be serviced twice weekly and kept stocked with toilet paper, soap, and paper towels.
- b. Toilets. You must provide at least one portable chemical toilet for every 20 workers or fraction of that number at the Work site as soon as construction operations commence. Toilet facilities must be serviced, at a minimum, twice weekly, which includes draining tank and refilling and disinfecting the interior of each toilet unit, and keeping each unit stocked with toilet paper. Toilet facilities must be maintained during the term of the construction period and removed upon completion of the Work.
- c. Stove heaters in temporary offices and sheds must be properly installed to protect combustible walls, floors and roof.
- d. Storage of Materials. If it is necessary to store materials, they must be protected in such a manner as to insure the preservation of their quality and fitness for the work. All stored materials will be inspected at the time of use in the Work even though they may have been inspected and approved before being placed in storage. You may store materials in the areas provided as working areas by the Contract. If no areas are provided, or if the areas provided are insufficient, you must provide the space

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required at your expense. Upon completion of the Work, you must clean and restore the storage sites and working areas to their original condition at your expense.

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

- e. **Storage Sheds.** You and each Subcontractor must provide suitable watertight storage sheds for your, or their own, use as needed. You and each Subcontractor are responsible for and must pay for any electric services to your or their storage sheds. However, the electrical Work must be performed by a licensed electrical Subcontractor. You are responsible for materials stored in the open; they must be arranged in an orderly manner and properly protected against the elements and damage.
4. **Working Space.** You must provide working space for your own use and for each of your Subcontractors. It must provide sufficient space for benches, tools, material storage and for such other purposes as may be required to properly perform and expedite the Work. Allocation of such Work areas is subject to approval by the Commissioner. You must maintain all Work areas in a clean and orderly condition and take whatever precautions as may be necessary adjacent to the new Work. You must clean, repair or replace any damage to Work site due to improper protection at no additional cost to the City.
5. **Equipment and Falsework.** When your proposed construction procedures and methods include the installation of any temporary structure that will affect the safety of the public, workers, inspectors or the Commissioner's personnel, you must submit your design plans with supporting calculations to the Commissioner for information only. The submitted data must be prepared and stamped by a registered Structural Engineer having a license to practice in the State of Illinois.

You must determine the methods to be employed, the procedures to be followed, the equipment, plant, falsework, shoring, bracing, and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract. Only adequate and safe procedures, methods, structures, and equipment must be used. You must furnish and maintain and are solely responsible for all equipment such as temporary ladders, ramps, runways, hoists, scaffolding, and similar items required for proper execution of Work. All such apparatus, equipment and construction must meet the requirements of Federal, State and local laws concerning the safety and protection of employees. No hoist, scaffolding or other equipment must be erected at such location as will interfere with general construction or progress of other trades. Hoists, scaffolding or other equipment must be located at sufficient distance from exterior walls to prevent staining or marring of any permanent Work. All suspended scaffolding and staging must be lowered to ground level at the end of each work day.

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6. **Project Signs.** You must erect and maintain signs identifying the Project and indicating City, and to the extent applicable, State and Federal participation. Work under this item includes constructing and erecting project signs of the size and material specified in the Contract drawings. These signs must be erected in locations approved by the Commissioner and must be maintained throughout the term of this Contract. You are responsible for the immediate removal of graffiti. If you are notified of graffiti, you must remove such within 24 hours. The signs must not be removed until you receive such notice from the Commissioner. Unless noted otherwise in Book 3, no separate payment will be made for furnishing, erecting and maintaining the project signs; it is incidental to the Contract.

J. Reports and Plans

1. **Reports.** You must promptly report to the Commissioner all accidents involving injury to personnel or damage to equipment and structures and must also submit a monthly summary of these accidents. The summary report must include identification of corrective actions taken to reduce the probability of similar accidents. In addition, you must furnish to the Commissioner a copy of all accident or health hazard reports prepared by OSHA or any other governmental agency within 2 days of receipt of such reports.
2. You must submit a copy of any and all notices of apparent violations that may be issued by OSHA, and disposition reports on any hearings, appeals, fines levied etc. to the Commissioner.
3. **Daily Progress Reports.** You and all Subcontractors must prepare and submit to the Commissioner daily progress reports on the various parts of the Work. The report must include the number of workers and the classification of the trades involved, equipment used and any pertinent information regarding possible delays in the Work.
4. **Procedures, Methods and Equipment.** You will determine the methods to be employed, the procedure to be followed, the equipment, plant, falsework, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract. Only adequate and safe procedures, methods, structures and equipment must be used. Any approval, constructive or otherwise, by the Commissioner of such methods, procedures and equipment in no way relieves you of any of your obligations under this Contract.

K. Department of Water Management Security

1. For purposes of this section "employee" refers to any individual employed or engaged by you or by any Subcontractor. If you, or any employee, in the performance of this Contract, has or will have access to a Chicago Department of Water Management facility, the City may conduct such background and employment checks, including criminal history checks and work permit documentation, as the Commissioner and the City may deem necessary, on you, any Subcontractor, or any of their respective employees. The Commissioner has the right to require you to supply or provide access to any additional information the Commissioner deems relevant. Before beginning work on the Project, you must:

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- a. provide the City with a list of all employees requiring access to enable the City to conduct such background and employment checks;
 - b. deliver to the City consent forms signed by all employees who will work on the Project consenting to the City's and your performance of the background checks in this Section; and
 - c. deliver to the City consent forms signed by all employees who will require access to the Department facility consenting to the searches described in this Section.
2. The Commissioner may preclude you, any Subcontractor, or any employee from performing on the Project. Further, you must immediately report any information to the Commissioner relating to any threat to Department infrastructure or facilities or the water supply of the City and must fully cooperate with the City and all governmental entities investigating the threat. You must, notwithstanding anything contained in the Contract Documents to the contrary, at no additional cost to the City, adhere, and cause your Subcontractors to adhere, to any security and safety guidelines developed by the City and furnished to you from time to time during the time of performance under this Contract and any extensions of it.
 3. Each employee whom you wish to have access to a Department facility must submit a signed, completed "Area Access Application" to the Department to receive a Department Security Badge. If you wish a vehicle to have access to a Department facility, you must submit a vehicle access application for that vehicle. The applications will solicit such information as the Commissioner in his discretion may require including, name address, date of birth, social security number (and for vehicles: make, model, driver's license number, vehicle license plate number, and appropriate stickers). You are responsible for requesting and completing these forms for each employee who will be working at Department facilities and all vehicles to be used on the Work site. The Commissioner may grant or deny the application at the Commissioner's sole discretion. You must make available to the Commissioner, within one business day of the request, the personnel file of any employee who will be working on the Project.
 4. At the Commissioner's request, you and your Subcontractors must maintain an employment history of employees going back 5 years from the date Contractor began Work on the Project. If requested, you must certify that you have verified the employment history as required on the form designated by the Commissioner. You must provide the City, at its request, a copy of the employment history for each employee. Employment history is subject to audit by the City.
 5. Department Security Badges and Vehicle Permits will only be issued based upon properly completed Area Access Application Forms. Employees or vehicles without proper credentials will not be allowed on Department property.
 6. The following rules related to Security Badges and Vehicle Permits must be adhered to:
 - a. Each employee must wear and display the Department Security Badge issued to that employee on their outer apparel at all times.

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- b. At the sole discretion of the Commissioner and law enforcement officials, including but not limited to the Chicago Police Department, Cook County Sheriffs Office, Illinois State Police or any other municipal, state or Federal law enforcement agency, all vehicles (and their contents) are subject to interior and exterior inspection entering or exiting Department facilities, and all employees and other individuals entering or exiting Department facilities are subject to searches. Vehicles may not contain any materials other than those needed for the Project. The Commissioner may deny access to any vehicle or individual at the Commissioner's sole discretion.
 - c. All individuals operating a vehicle on Department property must be familiar and comply with motor driving regulations and procedures of the State of Illinois and the City. The operator must be in possession of a valid, state-issued Motor Vehicle Operator's Drivers License.
 - d. All required City stickers and State Vehicle Inspection stickers must be valid.
 - e. Individuals must remain within their assigned area and haul routes unless otherwise instructed by the Commissioner or the City.
7. Access to the Work sites will be shown or designated on the Contract Documents, Drawings or determined by the Commissioner. The Commissioner may deny access when, at the Commissioner's sole discretion, the vehicle or individual poses some security risk to Department.
8. Whenever you receive permission to enter Department property in area where exit/entrance points are not secured by the City, you may be required to provide gates that comply with Department design and construction standards. You must provide a licensed and bonded security guard, subject to the Commissioner's approval and armed as deemed necessary by the Commissioner, at the gates when the gates are in use. Department Security will provide the locks. Failure to provide and maintain the necessary security will result in an immediate closure by Department personnel of the point of access.
9. Stockpiling materials and parking of equipment or vehicles near Department security fencing are prohibited.
10. Any security fencing, gates, or alarms damaged by you or your Subcontractors must be manned by your licensed and bonded security guard at your expense until the damaged items are restored. You must restore them to their original condition within an 8-hour period from the time of notice given by the Commissioner.
11. Temporary removal and security fencing, gate, or alarm to permit construction must be approved by the Commissioner, and you must provide a licensed and bonded security guard at the site, approved and armed as deemed necessary by the Commissioner, at your expense, on a 24-hour basis during the period of temporary removal. You must restore the items removed to their original condition when construction is completed.
12. Unauthorized hazardous or illegal material, including but not limited to hazardous materials as defined in 49 CFR Parts 100-185 (e.g., explosives, oxidizers, radiological materials, infectious materials), contraband, firearms and other weapons, illegal drugs and drug paraphernalia, may not be taken on Department property. Alcoholic beverages are also prohibited.

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13. All employees and vehicles working near Department facilities must be properly identified. All vehicle passes will be issued to you by the Commissioner, as required. You, your Subcontractors, and employees must return identification material to the Commissioner upon completion of your and their respective Work within the Project, and in all cases, you must return all identification material to the Commissioner after completion of the Project. Final Payment will not be made until all passes issued have been returned to Department Security.

XVII. STANDARD SPECIFICATIONS

A. Concreting in Freezing Weather

1. You must provide protection of Portland Cement Concrete pavement, curb and gutter and walkways from cold weather in accordance with Article 1020.13(c) of the Standard Specifications. For all work other than pavements, curbs and gutter and walkways, you must protect Portland Cement Concrete from cold weather in accordance with ACI 318 Article 5.2 and with ACI 306. The cost of all protection of the concrete from cold weather as may be required and as specified in the those specifications must be included in the Contract unit prices for Class "SI" concrete or other appropriate items of the Contract and no additional payment will be made therefore.

B. Protection of Railroad Traffic and Property

1. The following supplements the Standard Specifications and any Supplemental Specifications in effect; and in case of conflict with any part of parts of the Standard or Supplemental Specifications, this supplement takes precedence and governs. Add the following to Article 107.12., "Protection of Railroad Traffic and Property":
2. Whenever such Work, in the opinion of the Railroad Engineer, or his duly constituted and authorized representative, may affect the safety of trains and the continuity of the Railroad's operations, the method of doing such Work must first be submitted to the Railroad Engineer for approval, which will not be unreasonably withheld or delayed, and without which the Work must not be commenced or prosecuted.
3. The approval of the Railroad Engineer is not to be considered as a release from responsibility or liability for any damage that the Railroad may suffer, or for which it may be held liable by the acts of you, your Subcontractors, or your or their employees.
4. You are cautioned that when you are working over and/or near railroad property, you must provide adequate protection to safeguard the railroad property. You must also notify all railroad companies affected by the construction 10 days before starting any work that involves working on or over railroad property and must receive permission from the companies before entering onto railroad property.

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XVIII. ENVIRONMENTAL REQUIREMENTS

A. Compliance with Environmental Laws

1. You must comply with all Environmental Laws and any present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive that regulates, relates to, imposes liability for or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the Federal government, or the states, or any agency, court or body of the Federal government, any state or any political subdivision of them exercising executive, legislative, judicial, regulatory or administrative functions. You recognize that many Federal and state laws imposing environmental and resource conservation requirements may apply to the Contract. You also recognize that U.S. EPA, U.S. DOT and other agencies of the state and local governments have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the Contract. Thus, you must adhere to, and impose on your Subcontractors, any such requirements as these governments and agencies may now or in the future promulgate. Listed below in Section XVIII.F are requirements of particular concern. You acknowledge that this list does not constitute your entire obligation to meet all Federal environmental and resource conservation requirements. You must include these provisions in all subcontracts.
2. If you are required pursuant to any Environmental Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on, under, or about any premises you use to perform the Work required under this Contract, you must provide a copy of that report or notice to the City. In the event of a release or threatened release of Hazardous Materials or special waste into the environment, or in the event of any claim, demand, action or notice is made against you regarding your failure or alleged failure to comply with any Environmental Law, you must notify the City pursuant to Section XVIII.C, "Disposal of Waste Materials, Construction Debris, Soils and Waste," below.
3. If you fail to comply with any Environmental Law, the City may terminate this Contract in accordance with the default provisions of this Contract and may adversely affect your eligibility for future contract awards.

B. Environmental Permits

1. You must show evidence of, and keep current throughout the term of this Contract, all waste hauling, special waste hauling, disposal permits and insurance certificates required by Federal, State, City or other local governmental body or agency pursuant to any Environmental Law.
2. When requested by the Chief Procurement Officer, you must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Chief Procurement Officer throughout the duration of this Contract. Noncompliance with this requirement may be cause for termination of this Contract and declaring you non-responsible in future bids.

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3. Environmental Records and Reports. You are required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including:
 - a. Vehicle maintenance records;
 - b. Safety and accident reports;
 - c. IEPA or OSHA manifests;
 - d. Disposal records, including disposal site used, date, truck number and disposal weight, bills of lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material; and
 - e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

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

1. You are responsible for the proper disposal of all materials, construction debris, soil and other waste. Hauling and disposal by a Subcontractor does not relieve you from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes must be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. You must identify the disposal site(s) or transfer station(s) to which you have contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.
2. You must upon request provide the Commissioner or his designated representative with copies of all pertinent documents, including load tickets, manifests, bills of lading, scale tickets, and permits and/or licenses for the proposed transfer station and/or landfill. If the transfer station and/or landfill you propose to use does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, you must replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the City. If you dispose of materials, construction debris, soil or other wastes at a site that is not properly permitted, you will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.
3. You must notify the Commissioner, within 24 hours, of receipt of any environmental complaints, fines, citations, violations or notices of violation ("Environmental Claim") by any governmental body or regulatory agency against you by any third party relating to the loading, hauling or disposal of materials, construction debris, soil or other wastes. You must provide evidence to the Commissioner that any such Environmental Claim has been addressed to the satisfaction of its issuer or initiator.
4. You must notify the City of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of materials, construction debris, soil and other wastes under this Contract in which you are asked to participate.

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5. You must verify, in writing, whenever requested by the Commissioner, that all materials, construction debris, and other waste you accept from the City have been disposed of in compliance with all Environmental Laws.
6. The form for identifying your debris disposal/handling site(s) and acknowledging terms and conditions relating thereto which you have executed and attached to this Contract is incorporated by reference (the "Form"). In addition to the representations and requirements contained in the Form, you acknowledge that unless otherwise authorized in writing by the Commissioner of Environment, you must not continue to use a disposal/handling site identified in the Form that (i) has been cited as being in violation of any environmental law or regulation or of any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the Form, you must arrange for a substitute disposal/handling site that meets the requirements specified in the Form and provide a revised Form to the Commissioner of Environment. You further acknowledge that any such substitution is at no additional cost to the City, regardless of the reason necessitating such substitution.

D. Equipment and Environmental Control During Transport

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

E. Environmental Control

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

F. Environmental Protection

You must comply with, and must cause your Subcontractors to comply with, all Federal environmental and resource conservation laws and regulations, whether existing or promulgated later, as they apply to this Contract. You must include these provisions in all subcontracts. Some, but not all, of the major Federal laws that may affect this Contract include the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* and scattered sections of 29 USC; the Clean Water Act, as amended, scattered sections of 33 USC and 12 USC; the Resource Conservation and Recovery Act, as amended, 42 USC §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 USC §§ 9601 *et seq.*. You and your Subcontractors must also comply with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and

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Low-Income Populations,” 59 Fed. Reg. 7629, Feb. 16, 1994; U.S. DOT statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR Part 1500 *et seq.*; and U.S. DOT regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622.

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

G. Open Dumping Prohibited

1. You must remove all recyclable material and garbage, refuse or other waste material, including broken concrete, bricks, rock, paving asphalt and incidental debris generated from all construction or demolition activities performed under this Contract and transport them to a facility that is zoned and permitted to accept such material under Chapter 11-4 of the City Municipal Code and all Environmental Laws. You must retain, for each load of material, bills of lading, manifests, or other confirmatory receipts signed by a representative of the accepting facility and make them available to the City upon request.

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XIX. INSURANCE, INDEMNITY AND BONDS

A. Indemnity

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

B. Contribution

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

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C. Admiralty

1. In addition, you waive the right to receive the benefits of or to invoke the protection afforded by all maritime statutory limitations of liability, including the Limitation of Vessel Owner's Liability Act, 48 USC § 183 *et seq.*, that could act to diminish your liability for any harm or damage arising from your performance of your obligations under the Contract in any manner or for all claims or other costs arising from or occasioned by your operations on any waterways, including Lake Michigan and the Chicago River. This provision is not intended to avoid or waive Federal jurisdiction under the applicable admiralty laws. This waiver extends only to the Indemnitees, and not to third parties seeking recovery for claims solely against you.
2. Without limiting your waiver, you specifically consent to pay all sums in respect of any claims against the Indemnitees and other costs suffered by the Indemnitees arising from or occasioned by your operations in or on waterways, including the following:
3. Loss or damage to any other ship, vessel or boat caused proximately or otherwise by your vessel, or loss of the cargo or the other ship, vessel or boat;
4. Loss of life or personal injury, or for any cost of life salvage;
5. Loss or damage to any harbor, dock, building, graving or otherwise, slipway, pontoon, pier, quay, tunnel, jetty, stage, buoy, cables of any kind, or other fixed or movable object or property whatsoever;
6. The cost of the removal, raising or destruction of the wreck of any vessel you employ in performing your obligations under the Contract;
7. If a vessel is disabled or otherwise, the cost of towage or other salvage of any vessel you employ in performing your obligations under the Contract;
8. Loss or damage to the bottom, banks, or shoreline of the waterway.

D. Performance and Payment Bonds

You must, before award of the Contract, deliver to the Chief Procurement Officer a performance and payment bond in the amount set forth in Book 2. Any performance bond that you provide must comply with the provisions of 30 ILCS 550/1 *et seq.*, as amended, and of Chapter 2, § 2-92-030 of the Municipal Code, as amended. It must also be in the form of the performance and payment bond form included in Book 2. The surety or sureties issuing the bond must be acceptable to the Comptroller and must have a Best's Key Rating Guide of "B+," Class XI or greater and be listed in the most recently published "Listing of Approved Sureties" of the U.S. Department of the Treasury Circular 570, with underwriting limitations in excess of the Contract Price. The bond must cover the warranty period required by the Contract.

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

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

E. Insurance

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

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

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

XX. CLAIMS AND DISPUTES

A. General.

Compliance with the provisions in this Article XX is a precondition to seeking judicial review of an adverse decision of the Chief Procurement Officer. **You must not withhold performance of and must prosecute any Work required by the Commissioner while your claim, including judicial resolution, if any, is pending. You must prosecute all of your Work including any disputed Work with the same diligence and effort as if no dispute existed.** Neither the Chief Procurement Officer's determination (see Section XX.C.3 below), nor the continued performance by either party, constitutes an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

B. Claims

1. This provision applies to all claims under this Contract, including those for time, money, or both.

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

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

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

C. Disputes

1. Invoking Dispute Resolution Procedures. If you dispute the Commissioner's resolution or denial of your claim, or if your claim is deemed denied, you have 10 days to forward your claim and your documentation to the Chief Procurement Officer indicating to him that you are requesting resolution of a dispute and showing that you have complied with the preceding claims procedures. Your 10-day period to invoke dispute resolution by the Chief Procurement Officer is counted from the date the Commissioner's written resolution was sent to you, or, if he has not responded or forwarded the claim, from the date on which the time for the Commissioner's response lapsed.
2. Waiver. If you fail to file a Request for Resolution of Dispute with the Chief Procurement Officer within the 10-day period you will have waived your claim, the right to make the claim later, and the right to dispute its resolution or denial.
3. Dispute Procedures. Once the dispute resolution procedures are invoked, the Chief Procurement Officer will proceed to a final and binding decision under such rules and regulations as he from time to time promulgates. A copy of those rules and/or regulations is available through the Department of Procurement Services. The Chief Procurement Officer's decision will be implemented through a Contract Modification, if

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required, that will be made a part of the Contract with your signature or without it should you refuse to sign the Contract Modification. If either you or the Commissioner disagree(s) with the decision of the Chief Procurement Officer, the exclusive remedy is judicial review by a common law *writ of certiorari*. Unless such review is sought within 35 days of receipt of the Chief Procurement Officer's decision, all rights to seek judicial review are waived.

XXI. EVENTS OF DEFAULT AND TERMINATION

A. Chief Procurement Officer's Right

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

B. Events of Default

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

1. Failure to begin the Work at the time specified;
2. Failure to perform the Work with sufficient workers and equipment or with sufficient materials to insure the completion of Work or any part of the Work within the time specified by the Contract;
3. Failure to perform the Work in accordance with the Contract;
4. Failure to promptly remove materials, repair, or replace Work that was or were rejected as defective or unsuitable;
5. Unauthorized discontinuation of the Work;
6. Insolvency, bankruptcy or assignment for the benefit of creditors that impairs your ability to pay Subcontractors or perform the Work;
7. Failure to pay Subcontractors or material suppliers;
8. Failure to carry on the Work in a manner acceptable to the Commissioner;
9. Failure to observe Federal, state, or local laws or regulations governing safety and security requirements, including all environmental requirements;
10. Failure to comply with any other term of this Contract that states an event of default or failure to comply with any term of this Contract in any material respect; and

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11. Failure to identify disposal site(s) for materials, construction debris, soil and other wastes or to submit such information when requested by the Chief Procurement Officer.
12. Disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the Contract and such status was misrepresented by the contractor.
13. Failure to notify City of change in information submitted in Contractor's original Economic Disclosure Statement ("EDS") and to submit a new EDS;
14. Default under any other City contract;
15. Violation of any City ordinance, even if unrelated to Contract performance.
16. Failure to comply with the Child Support Arrearage Ordinance, § 2-92-415 of the Municipal Code;

C. Remedies

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

1. Termination Without Cure. The Chief Procurement Officer may terminate the Contract by written notice of the default and termination to you and your sureties. The Chief Procurement Officer's decision and declaration of termination are final and effective.
2. Opportunity to Cure. The Chief Procurement Officer may by written notice of the default provide you the opportunity to cure it. You must cure the default within 10 days after notice from the Chief Procurement Officer is given. If the Chief Procurement Officer receives written notification from the Commissioner that you have not cured the default within the 10-day cure period, the Chief Procurement Officer may at any time after that terminate the Contract, in which event the termination of the Contract is final and effective.
3. In addition to the foregoing, upon an event of default as defined in Section XXI.B, "Events of Default," the City may invoke any or all of the following remedies:
 - a. The right of set-off against any payments due or to become due to you and against any retainage;
 - b. The right to take over and complete the Work, or any part of it, either directly or through others. The City may use your Subcontractors, materials and equipment to complete the Work. If the City notifies you that it is invoking this remedy, all rights you may have in or under your subcontracts are assigned to the City, subject to the City's right to take assignment of all or only selected subcontracts, at the City's discretion. The sole obligation accepted by the City under such subcontracts is to pay for Work satisfactorily performed after the date of the assignment. In the event a conditional assignment has not been executed, you must execute, or cause to be executed, any assignment, agreement, or other document that may be necessary, in the sole opinion of the Corporation Counsel, to evidence or effect compliance with this provision. You must promptly deliver such documents upon the City's request. In the case of any subcontract so assigned and accepted by the City, you remain liable to the Subcontractors for any payment already invoiced to and paid by the City,

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and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortuous conduct, or any other act or omission, or breach of Contract, by you, your officers, employees, agents, and other Subcontractors, arising before the date of assignment to the City, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. You must notify your Subcontractors of these requirements;

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

D. Nonexclusivity of Remedies

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

E. No Waiver of Legal Rights; No Estoppel

Neither the acceptance by the City or any of its representatives, nor its payment for the whole or any part of the Work, nor its extension of time, nor any possession taken by the City, will operate as a waiver by the City of any portion of the Contract, or of any power reserved in this Contract or any right of the City to damages provided in this Contract.

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

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The City is not precluded or estopped from showing the true amount and character of the Work you performed and materials you furnished or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The City is not precluded or estopped from recovering from you and your sureties such damages as the City may sustain by reason of your failure to comply with the terms of the Contract.

F. Adjudication of Termination

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

G. Non-Appropriation

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

H. Early Termination

1. The City, through the Chief Procurement Officer, may terminate the Contract by written notice stating the effective date of the termination. Immediately upon receipt of such notice, you must provide similar written notice to the affected Subcontractor(s), whereupon you and they must, except for services necessary for the orderly termination of the Work.
 - a. Stop all Work and place no further order or subcontracts for materials, services, equipment or supplies;
 - b. Assign to the City, in the manner and to the extent directed, all of your rights under Work orders, purchase orders and subcontracts relating to the portion of the Work that has been completed;
 - c. Terminate Work orders, purchase orders and subcontracts outstanding to the extent that they relate to the Work and are not assigned to the City;
 - d. Take any action necessary to protect property in your possession in which the City has or may acquire an interest; and
 - e. Take any other action toward termination of the Work that the City may direct.
2. If all or a portion of your Work is terminated pursuant to this Section XXI.H, the City will pay to you, subject to the limitations set forth in this Contract, the sum of the following costs:
 - a. That portion of the Contract Price related to the Work you satisfactorily completed immediately before notice of termination, less the payments for progress or changes previously made;

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- b. Expenses incurred for which you are liable as the result of your termination of respective Work orders, purchase orders or subcontracts related to the notice of termination.
3. The City will not pay, and no payment is due, for Work not actually performed. The City will deduct from amounts claimed to be due any amounts previously paid to you and for any amounts that may be due the City, or that the City may offset or withhold by the terms of this Contract. The total amount of all payments to you must not, in any event, exceed the proportion that the Work actually performed (including materials delivered to the Project site minus credits for returned goods or canceled orders) at the date of termination bears to the entire Work to be performed under this Contract. Any payment to you under this Section will be made in accordance with the provisions of Article XIII, "Payments."
4. After receipt of a notice of Early Termination, you must submit to the Commissioner your final invoice with supporting documentation promptly following the effective date of termination. The Commissioner may require certified payrolls, receipts and other proof of expenditures. The final invoice must be submitted in no event more than 60 days after the effective date of termination. Failure to submit the final invoice within 60 days after the effective date of termination constitutes a waiver of the final invoice.

I. Non-Appropriation

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

XXII. COMPLIANCE WITH ALL LAWS

A. Contractor Must Comply with All Laws

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

B. Non-Discrimination

1. In connection with this Contract, Contractor must not fail to hire, refuse to hire, discharge, or discriminate against any individual with respect to compensation or the terms, conditions, or privileges of employment because of that individual's race, color, religion, gender, age, disability, or national origin. Contractor must not limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise, adversely affect such individual's

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status as an employee, because of the individual's race, color, religion, gender, age, disability, or national origin.

2. Contractor must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and the rules and regulations of the Illinois Department of Human Rights; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.*, as amended; and the Environmental Barriers Act, 410 ILCS 251 *et seq.*

3. Contractor must also comply with the Chicago Human Rights Ordinance, Chapter 2-160, § 2-160-010 *et seq.* of the Municipal Code, as amended. Further, Contractor must furnish such reports and information as requested by the Chicago Commission of Human Relations.

4. Subcontractors. Contractor must incorporate all of the above provisions in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Contract.

C. Business Relationships with Elected Officials

1. Under § 2-156-030(b) of the Municipal Code, 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 § 2-156-030(b) by any elected official with respect to the Agreement is grounds for termination of the Agreement.** The term business relationship is defined as set forth in § 2-156-080 of the Municipal Code.

D. Chicago Inspector General

1. As required by § 2-56-090 of the Municipal Code, it is the duty of every Contractor, all subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, Contractor, 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. Contractor must abide by all provisions of Chapter 2-56 of the Municipal Code. All subcontracts must inform subcontractors of the provision and require understanding and compliance.

E. Governmental Ethics Ordinance

1. As required by § 2-156-120 of the Municipal Code, no payment, gratuity or offer of employment shall be made in connection with any city contract, by or on behalf of a subcontractor to the prime contractor or higher-tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

F. False Statements

1. False statements made in connection with this Agreement, including statements in, omissions from and failures to timely update the EDS, as well as in any other affidavits,

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

G. Americans with Disabilities Act

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

H. MacBride Principles Ordinance

1. If the Contractor conducts any business operations in Northern Ireland, it is hereby required that the contractor shall make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Law 3220).

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

1. During the Term of this Agreement, or during any period when an extension of this Agreement is being sought or negotiated, neither the Contractor nor any party with a beneficial interest or ownership interest in the Contractor of more than 7.5%, nor any subcontractor of the Contractor or any owner of a subcontractor with more than 7.5% interest in the subcontractor, nor any person with a familial or domestic relationship, including domestic partners, with any of the above may make themselves, may coerce or compel any employee to make or reimburse any employee for any amount, or otherwise participate in the solicitation of amounts contributed to the Mayor or to the Mayor's political fundraising committee.
2. Contractor's violation of Mayoral Executive Order No. 05-1 constitutes an Event of Default 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.

J. Licensing of General Contractors

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

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2. As stated elsewhere in the specification, the City reserves the right to reject any or all bids.
3. Bidder must be in compliance with the requirements of Chapter 4-36, in the appropriate license class commensurate with the size of this project, if the license is required for the scope of work, **at the time Bidder submits its bid** and, if it is awarded a contract, throughout the term of the contract.
4. Contractor's failure to be licensed as a "general contractor" at all times throughout the term of the contract, if the license is required for the scope of work, is an **event of default** under the Agreement and the City may exercise any and all rights and remedies permitted under the contract, at law, or in equity.

K. Buy America

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

L. Steel Products

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

M. WastesAs required by § 11-4-1600(e) of the Municipal Code, violation of §§ 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 by the Contractor or any subcontractor during the term of the Agreement, whether or not in the performance of the Agreement, constitutes an event of default. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of the Agreement, and may further affect Contractor's eligibility for future contract awards. The opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Contract, at law or in equity.

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

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O. Chicago Business Preference

The Chief Procurement Officer will accept the lowest bid price or lowest evaluated bid price from a responsive and responsible Chicago business, provided that the bid does not exceed the lowest bid price or lowest evaluated bid price from a responsive and responsible non-Chicago business by more than two percent (2%).

A Chicago business ("Chicago Business") is a business located within the corporate limits of the City, which has the majority of its regular, full-time work force located within the City, and is subject to City of Chicago taxes.

Where all partners to a joint venture are Chicago Businesses, the joint venture shall be deemed to be a Chicago Business. Where not all partners to a joint venture are Chicago Businesses, such joint venture shall be considered a Chicago Business only if Chicago Businesses hold at least a fifty percent (50%) interest in the venture. Chicago Businesses have a fifty percent (50%) interest in the joint venture only if the Chicago Business partners in the venture hold subcontracts equal to fifty percent (50%) or more of the amount of the bid. Joint venture bidders shall submit information and documentation (including, but not limited to, the joint venture agreement and subcontracts) with their bids to establish their eligibility for the Chicago Business Preference. A joint venture bidder which fails to submit such information shall not be entitled to the Chicago Business Preference.

The Chief Procurement Officer's determination of a bidder's eligibility for the Chicago Business Preference shall be final.

XXIII. MISCELLANEOUS

A. Counterparts

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

B. Modifications

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

C. Governing Law

This Contract is governed in accordance with the laws of the State of Illinois without regard to choice of law principles. You irrevocably submit, and must cause your Subcontractors to submit, to the original jurisdiction of those State or Federal courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract. The City may, at its option, have service of process on you either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office

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that you actually maintain, or by personal delivery on any of your officers, directors, or managing or general agents.

D. Consent to Service of Process and Jurisdiction

All judicial proceedings brought against you with respect to this Contract may be brought in (1) any court of the state of Illinois of competent jurisdiction, or (2) any Federal court of competent jurisdiction located within the boundaries of the District Courts of the Northern District of Illinois. By execution and delivery of this Contract, you accept, for yourself and in connection with your properties, generally and unconditionally, the exclusive jurisdiction of those courts, and you irrevocably consent to be bound by any final judgment rendered by them from which no appeal has been taken or is available. You designate and appoint the representative identified on the signature page of this Contract under the heading "Designation of Agent for Service Process" as your agent in Chicago, Illinois to receive on your behalf service of all process in any such proceedings in those courts (which representative must be available to receive service at all times), the service being acknowledged by the representative to effective and binding service in every respect. You may change your agent only upon giving written notice to the City of the name and address of a new Agent for Service of Process who works within the geographical boundaries of the City and that you retain or employ. You irrevocably waive any objection (including any objection to venue or based on the grounds of *forum non conveniens*) that you may now or later have to bring any action or proceeding with respect to this Contract in the jurisdiction set forth above. Nothing in this Section will affect the right to serve process in any other manner permitted by law or will limit the right of the City to bring proceedings against you in the courts of any other jurisdiction.

E. Contractor Cooperation

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

F. Joint and Several Liability

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

G. Third Party Beneficiaries

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

Contractor acknowledges that the Chicago Park District shall be a third party beneficiary under this Contract. The Chicago Park District shall have no recourse against the City for failure to provide Work or for deficiencies in the Work.

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H. Notices

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

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

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

I. Authority

Your execution of this Contract is authorized and the signature of each person signing on your behalf has been made with complete and full authority to commit you to all terms and conditions of this Contract, including each and every representation, certification, and warranty contained in this Contract, attached to it and collectively incorporated by reference in it or as may be required by the terms and conditions of this Contract. If other than a sole proprietorship, you must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entity's by-laws and procedures.

J. Consents and Approvals

Unless otherwise expressly stated in this Contract or otherwise required by law, any consents and approvals to be given by the City are made by the Commissioner.

K. Software License Agreements

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

XXIV. SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT

A. Policy

It is the policy of the City of Chicago that businesses certified as Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) in accordance with Section 2-92-420 *et seq.* of the Municipal Code and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code, shall have the full and fair opportunities to participate fully in the performance of this agreement. Therefore, the bidder or contractor shall not discriminate against any person or business on the basis of race, color, national

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origin, or sex, and shall take affirmative actions to ensure that MBEs and WBEs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services.

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

Under the City's MBE/WBE Construction Program, the program-wide aspirational goals are 24% Minority Owned Business Enterprise participation and 4% Women Owned Business Enterprise participation. The prior goals for this particular scope of work were 16.9% and 4.5% and contractors operating under the old program were able to meet these goals. The City is setting goals of 24% and 4% on contracts under \$10,000,000 in line with its overall aspirational goals, and is requiring that bidders make a good faith effort in meeting or exceeding those goals. In the event a bidder is unable to meet these goals, "Schedule H: Documentation of Good Faith Efforts," provided in the bid package, must be submitted.

Accordingly, the bidder or contractor commits to make good faith efforts to expend at least the percentages of the total Contract price, as identified on page 2 of Book 2, of the Contract (inclusive of any and all modifications and amendments), if awarded, with MBEs and WBEs.

This contract specific goal provision shall supersede any conflicting language or provisions that may be contained in this document.

For purposes of evaluating the bidder's responsiveness, the MBE and WBE contract specific goals shall be percentages of the bidder's total base bid. However, the MBE and WBE contract specific goals shall apply to the total value of this Contract, including all amendments and modifications. The Chief Procurement Officer may review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is greater, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

MBE and WBE contract specific goals are separate and a firm certified as both a MBE and a WBE shall not be credited more than once against a bidder's or contractor's MBE or WBE commitment in the performance of this Contract.

B. Definitions

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

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2. **"Bidder"** means any person or business entity that seeks to enter into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.
3. **"Chief Procurement Officer"** means the chief procurement officer of the City of Chicago or his or her designee.
4. **"Commercially Useful Function"** means responsibility for the execution of a distinct element of the work of the Contract, which is carried out by actually performing, managing and supervising the work involved or fulfilling responsibilities as a joint venture partner.
5. **"Construction Contract"** means a contract, purchase order or agreement (other than lease of real property) for the construction, repair or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.
6. **"Contract Compliance Officer"** means the officer appointed pursuant to § 2-92-490 of the Municipal Code.
7. **"Contract Specific Goals"** means the subcontracting goals for MBE and WBE participation established for a particular contract.
8. **"Contractor"** means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.
9. **"Directory"** means the Directory of Minority Business MBEs and WBEs maintained and published by the Contract Compliance Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.
10. **"Good Faith Efforts"** means actions undertaken by a bidder or contractor to achieve a contract specific goal that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.
11. **"Joint Venture"** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge.
12. **"Minority Business Enterprise" or "MBE"** means a firm certified as a minority-owned business enterprise in accordance with City Ordinances and Regulations.
13. **"Women Business Enterprise" or "WBE"** means a firm certified as a women-owned business enterprise in accordance with City Ordinances and Regulations.

C. Joint Ventures

The formation of joint ventures with MBEs and WBEs to meet contract specific goals is encouraged. A joint venture may be formed between MBEs and/or WBEs or between MBEs and/or WBEs and non-certified firms.

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1. A joint venture may be eligible for credit towards the contract specific goals only if:
 - a. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
 - b. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the work of the contract, to be performed with its own forces and its own equipment and for which it is separately at risk, equal to 100% of the value of its ownership in the joint venture;
 - c. Each joint venture partner executes the bid to the City; and
 - d. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract.
2. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture shall be final.

D. Counting MBE and WBE Participation Towards the Contract Specific Goals

MBE and WBE participation shall be counted toward the contract specific goals as follows:

1. The value of the work actually performed by the MBE's or WBE's own forces shall be counted towards the contract specific goals. The entire amount of that portion of the construction contract that is performed by the MBE's or WBE's own forces, including supplies purchased or equipment leased by the MBE or WBE shall be counted. Supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or non-certified MBE's or WBE's shall not be counted towards the contract specific goals.
2. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the contract specific goals. A joint venture may also count the dollar value of work subcontracted to other MBE's and WBE's. Work actually performed by the forces of a non-certified joint venture partner shall not be counted toward the contract specific goals.
3. When a MBE or WBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the contract specific goals only if the MBE's or WBE's subcontractor is itself a MBE or WBE. Work that a MBE or WBE subcontracts to a non-MBE or WBE does not count towards the contract specific goals.
4. A bidder or contractor may count toward its MBE or WBE contract specific goal sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a MBE or WBE regular dealer or supplier. A regular dealer or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract

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are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

5. A bidder or contractor may count toward its MBE or WBE contract specific goal one hundred percent (100%) of such expenditures to an MBE or WBE manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
6. A bidder or contractor may count toward the contract specific goals the following expenditures to MBE or WBE firms that are not manufacturers or regular dealers:
 - a. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
7. A bidder or contractor may count toward the contract specific goals only expenditures to firms that perform a commercially useful function in the work of the contract.
 - a. A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a firm is performing a commercially useful function, the Chief Procurement Officer shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.

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- b. A MBE or WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether a MBE or WBE is such an extra participant, the Chief Procurement Officer shall examine similar transactions, particularly those in which MBEs or WBEs do not participate.
 - c. If a MBE or WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumptively not performing a commercially useful function. The MBE or WBE may present evidence to the Chief Procurement Officer to rebut this presumption.
8. MBE and WBE contract specific goals are separate. A firm certified as both a MBE and a WBE shall not be credited more than once against a bidder's or contractor's MBE or WBE commitment in the performance of this contract.

E. Procedure to Determine Bid Compliance

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

1. Schedule B: MBE/WBE Affidavit of Joint Venture

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

- a. The parties' contributions of capital, personnel and equipment and share of the costs of insurance and bonding;
- b. Work items to be performed by the MBE s or WBE s own forces;
- c. Work items to be performed under the supervision of the MBE or WBE venture partner; and
- d. The MBE's or WBE's commitment of management, supervisory and operative personnel dedicated to the performance of the project.

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

The bidder must submit a Schedule C with the bid for each MBE and WBE included on the Schedule D. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. An executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within three (3) business days after the date of the bid opening when a facsimile copy of the Schedule C has been submitted with the bid.

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

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The bidder must submit a Schedule D with the bid. An approved Compliance Plan is a condition precedent to commencement of the contract.

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

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the contract specific goals. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. If a proposed MBE or WBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section XXIV.G.

4. Letters of Certification

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

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

5. Schedule F: Report of Subcontractor Solicitations

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

6. Schedule H: Documentation of Good Faith Efforts

- a. If a bidder determines that it is unable to meet the contract specific goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts;
- b. If the bidder's Compliance Plan demonstrates that it has not met the contract specific goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive.
- c. Documentation must include but is not necessarily limited to:
 - (1) detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;

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- (2) A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
 - (a) Names, addresses and telephone numbers of firms solicited;
 - (b) Date and time of contact;
 - (c) Person contacted;
 - (d) Method of contact (letter, telephone call, facsimile, electronic mail, etc.)
- (3) Evidence of contact, including:
 - (a) Project identification and location;
 - (b) Classification/commodity of work items for which quotations were sought;
 - (c) Date, item and location for acceptance of subcontractor bids;
 - (d) Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
- (4) Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations on Attachment A.
- (5) Agreements between a bidder or contractor and an MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
- (6) Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.
- (7) If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within three (3) business days that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
- (8) No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

F. Demonstration of Good Faith Efforts

1. In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered.
2. The Contract Compliance Officer shall consider, at a minimum, the bidder's or contractor's efforts to:

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- a. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within sufficient time to allow them to respond. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
- b. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
- c. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
- d. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's or contractor's failure to meet the contract specific goals, as long as such costs are reasonable.
- e. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the contract specific goals.
- f. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the contract specific goals.
- g. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the contract specific goals have been met.
- h. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.
- i. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
- j. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
- k. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and Federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.

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3. If the bidder disagrees with the City's determination that it did not make good faith efforts, the bidder may file a protest pursuant to the Department of Procurement Services Solicitation and Contracting Process Protest Procedures within 10 business days of a final adverse decision by the Contract Compliance Officer.

G. Changes to Compliance Plan

1. The bidder or contractor may not make changes to its Compliance Plan or contractual MBE and WBE commitments or substitute MBE or WBE subcontractors without the prior written approval of the Contract Compliance Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the bidder's or contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
2. Substitutions of a MBE or WBE subcontractor shall be permitted only on the following bases:
 - a. Unavailability after receipt of reasonable notice to proceed;
 - b. Failure of performance;
 - c. Financial incapacity;
 - d. Refusal by the subcontractor to honor the bid or proposal price or scope;
 - e. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
 - f. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
 - g. The subcontractor's withdrawal of its bid or proposal; or
 - h. De-certification the subcontractor as a MBE or WBE.
3. If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:
 - a. The bidder or contractor must notify the Contract Compliance Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its cope of work must be submitted with the request.

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- b. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
 - c. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Contract Compliance Officer, it must make good faith efforts to meet the contract specific goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections XXIV.E and XXIV.F. If the MBE or WBE contract specific goal cannot be reached and good faith efforts have been made, the bidder or contractor may substitute with a non-MBE or non-WBE.
 - d. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Contract Compliance Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
 - e. A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
4. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

H. Reporting and Record Keeping

1. During the term of the contract, the contractor shall submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date.
2. The contractor shall file regular Status Reports of MBE/WBE Subcontract Payments, detailing MBE and WBE payments to date, with each monthly payment voucher (Summary of Estimate). The voucher will not be transmitted to the City Comptroller for payment until the current Status Report has been filed with the Department of Procurement Services.
3. The Contract Compliance Officer shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
4. The contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after final acceptance of the work. Full access to these records shall be granted to City, Federal or state authorities, or other authorized persons.

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I. Non-Compliance

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

J. Arbitration

If the City determines that a contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

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

A MBE or WBE seeking arbitration shall serve written notice upon the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid *pro rata* by the parties.

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

K. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

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L. Information Sources

Small business guaranteed loans; surety bond guarantees:

U. S. Small Business Administration
500 West Madison Street, Suite 1250
Chicago, Illinois 60661

General information:	(312) 353-4528
Bond Guarantee Program – Surety Bonds:	(312) 353-4003
Procurement Assistance:	(312) 353-4503

Project information and general MBE/WBE Program information:

City of Chicago Department of Procurement Services Contract Administration Division City Hall Room 403 Chicago, Illinois 60602 312-744-4900	City of Chicago Department of Procurement Services Office of Vendor Relations City Hall – Room 403 Chicago, Illinois 60602 Attention: Monica Cardenas (312) 744-0845
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City of Chicago
Department of Procurement Services
Office of Business Development – Certification Unit
City Hall – Room 403
Chicago, Illinois 60602

www.cityofchicago.org/purchasing

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Attachment A - Assist Agencies

African American Contractors Association
3901 S. State
Chicago, IL 60653
Phone #: (312) 915-5960
Fax #: (312) 567-9919
Web: none
Email: omaraaca@hotmail.com
Attn: Omar Shareef, President

Asian American Alliance
222 W. Cermak Road
Suite 303
Chicago, IL 60616
Phone #: (773) 293-1249
Fax #: (773) 293-3642
Web: www.asianamericanalliance.com
Email: ctakada@asianamericanalliance.com
Attn: Mitch Schneider, Executive Director

Association of Asian Construction Enterprises
333 N. Ogden Avenue
Chicago, IL 60607
Phone #: (312) 563-0746
Fax #: (312) 666-1785
Web: None
Attn: Perry Nakachi, President

Black Contractors United
400 W. 76th Street
Suite 200
Chicago, IL 60620
Phone #: (773) 483-4000
Fax #: (773) 483-4150
Web: www.blackcontractorsunited.com
Attn: Florence Cox, Executive Director

Chicago Minority Business Development Council, Inc.
1 East Wacker Drive
Suite 1200
Chicago, IL 60601
Phone #: (312) 755-8880
Fax #: (312) 755-8890
Web: www.cmbdc.org
Attn: Tracye Smith, Executive Director

Chicago Urban League
220 S. State Street
11th Floor
Chicago, IL 60604
Phone #: (312) 692-0766 Ext. 256
Fax #: (312) 692-0769
Web: www.cul-chicago.org
Email: jarchie@cul-chicago.org
Attn: Joan Archie, Director of
Employment, Counseling & Training

Cosmopolitan Chamber of Commerce
560 West Lake St., Suite 5th Floor
Chicago, IL 60661
Phone #: (312) 786-0212
Fax #: (312) 234-9807
Web: www.cchamber.org
Attn: Gloria Bell, Executive Director

Federation of Women Contractors
5650 S. Archer Avenue
Chicago, IL 60638
Phone #: (312) 360-1122
Fax #: (312) 360-0239
Web: www.fwcchicago.com/
Attn: Beth Doria, Executive Director

Hispanic American Contractors Industry Association
(HACIA)
901 West Jackson Boulevard
Suite 205
Chicago, IL 60607
Phone #: (312) 666-5910
Fax #: (312) 666-5692
Web: www.haciaworks.org
Email: mailto:csatoy@haciaworks.org
Attn: Cesar A. Santoy, Executive Director

Latin American Chamber of Commerce
3512 West Fullerton Avenue
Chicago, IL 60647
Phone #: (773) 252-5211
Fax #: (773) 252-7065
Web: www.latinamericanchamberofcommerce.com
Email: lacc@latinamericanchamberofcommerce
Attn: Anthony Guillen, Director

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Illinois Hispanic Chamber of Commerce (Formerly MACC) 33 N. LaSalle Street Suite 1720 Chicago, IL 60602 Phone #: (312) 372-3010 Fax #: (312) 372-3403 Web: www.maccbusiness.com Attn: Juan Ochoa, President & CEO	Successful Independent Network Association (SIN) 2100 W. Washington Chicago, IL 60612 Phone #: (312) 850-1665 Fax #: (312) 850-1665 E-mail: dianejonesin@yahoo.com Attn: Diane Jones, President Attn: Arnette King, General Manager
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National Association of Women Business Owners
Chicago Chapter
330 S. Wells Street
Suite 1110
Chicago, IL 60606
Phone #: (312) 322-0990
Fax #: (312) 461-0238
Web: www.nawbochicago.org
Email: info@nawbochicago.com
Attn: Clair Gregoire, President

Triton College
Small Business Development Center
2000 Fifth Avenue
Room R-201
River Grove, IL 60171
Phone #: (708) 456-0300 Ext. 3714

Rainbow/PUSH Coalition
930 E. 50th Street
Chicago, IL 60615
Phone #: (773) 256-2728
Fax #: (773) 256-2751
Web: www.rainbowpush.org
Attn: Donna Gaines, Deputy Director Trade Bureau

Women's Business Development Center
8 South Michigan Avenue
Suite 400
Chicago, IL 60603
Phone #: (312) 853-3477
Fax #: (312) 853-0145
Web: www.wbdc.org
EMAIL: mailto:hratner@wbdc.org
Attn: Hedy Ratner, Co-President
Carol Dougal, Co-President

Suburban Black Contractors
848 Dodge Avenue
Suite 347
Evanston, IL 60202
Phone #: (847) 359-5356
Fax #: (847) 359-5367
Web: None
Attn: Larry Bullock, President

The Chicago Area Gay & Lesbian Chamber of Commerce
1210 W. Rosedale
Chicago, IL 60660
Phone #: (773) 303-0167
Fax #: (773) 303-0168
Web: http://www.glchamber.org/
Christee Snell, Executive Director

REV. 4/12/05

END OF ATTACHMENT A
ATTACHMENT B IS LOCATED IN BOOK 2 (OR IS AVAILABLE
FROM THE DEPARTMENT OF PROCUREMENT SERVICES)