

Exhibit D
Delegate Agency Grant Agreement
Corporate Funds

TERMS AND CONDITIONS

ARTICLE 1. FUNDING CHANGES

At any time upon written notice to you the City, in its sole discretion, including without limitation based on periodic reviews of the spending levels under this Agreement, may reduce the Maximum Compensation and/or Committed Compensation. Upon reduction of the Maximum Compensation and/or Committed Compensation, you will fully cooperate with the City's deobligation and/or reprogramming of funds. See Article 5, Compensation, and Article 13, Additional Compensation Provisions, and other provisions for further terms and conditions related to compensation under this Agreement.

ARTICLE 2. DEFINITIONS

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

"Additional Services" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 3.1, Scope of Services, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 10.3, Amendments, before you are obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"Affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

"Agreement" means this Delegate Agency Grant Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

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

"Municipal Code" means the Municipal Code of Chicago, as amended.

"Services" means, collectively, the services, duties and responsibilities described in Article 3, Duties and Responsibilities of Grantee, and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subcontractor" means any person or entity with whom you contract to provide any part of the Services, including subcontractors and subconsultants of any tier, suppliers and materials providers, whether or not in privity with you.

2.2 Interpretation

- i. The term "**include**" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.
- ii. All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- iii. Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- iv. Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- v. Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- vi. All references to a number of days mean calendar days, unless indicated otherwise.

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF GRANTEE

3.1 Scope of Services. This description of Services is intended to be general in nature and is neither a complete description of your Services nor a limitation on the Services that you are to provide under this Agreement. You must provide the Services in accordance with the standards of performance set forth in Section 3.3, Standard of Performance. The Services that you must provide include, but are not limited to, those described in Exhibit B, Scope of Services and Time Limits for Performance, which is attached to this Agreement and incorporated by reference as if fully set forth herein. Exhibit B will set forth specific reporting requirements, if any.

3.2 Deliverables. In carrying out your Services, you must prepare or provide to the City various Deliverables. "**Deliverables**" include work product, such as written reviews, recommendations, reports and analyses, produced by you for the City. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that you have failed to comply with the foregoing standards, the City has 30 days from the discovery to notify you of your failure. If you do not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 9.1, Events of Default Defined. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve you of your commitments under this Agreement.

3.3 Standard of Performance. You must perform all Services required of you under this Agreement with that degree of skill, care and diligence normally shown by a contractor performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. You acknowledge that you are entrusted with or have access to valuable and confidential information and records of the City and with respect to that information, you agree to be held to the standard of care of a fiduciary.

You must assure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately

licensed, if required by law. You must provide copies of any such licenses. You remain responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by you or your Subcontractors or others on your behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Agreement.

If you fail to comply with the foregoing standards, you must perform again, at your own expense, all Services required to be re-performed as a direct or indirect result of that failure, unless the reason is failure to have and maintain required licensure. See subsection 8.1(A), Warranties and Representations, regarding failure to comply with licensure requirements. Any review, approval, acceptance or payment for any of the Services by the City does not relieve you of your responsibility for the professional skill and care and technical accuracy of your Services and Deliverables. This provision in no way limits the City's rights against you either under this Agreement, at law or in equity.

3.4 Personnel

(a) Adequate Staffing, Personnel Qualifications, Background Checks

You must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. You, if exempt from licensure under any applicable statute, must utilize personnel who are otherwise competent and qualified to perform the Services required. You must retain and make available to the City proof of certification or expertise including, but not limited to, resumes and job descriptions. The level of staffing may be revised from time to time by notice in writing from you to the City and with written consent of the City, which consent the City will not withhold unreasonably. If the City, fails to object to the revision within 14 days after receiving the notice, then the revision will be considered accepted by the City.

If you provide any Services to children you shall, at your own cost and expense, comply with all applicable Federal, State and local laws, ordinances, policies, procedures, regulations, rules, requirements and executive orders relating to background checks, fingerprinting and screening procedures as in effect from time to time (the "**Legal Requirements**"). In connection with the Services, you will not permit any adult, whether a member of your staff or otherwise, to be involved with the Services or to have direct contact with children if any applicable Legal Requirements would prohibit such adult from having such involvement or contact.

(b) Salaries and Wages

You and your Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement you underpay any such salaries or wages, the Comptroller for the City may withhold, out of payments due to you, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of you to the respective employees to whom they are due. The parties acknowledge that this Section 3.4(b) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

3.5 Minority and Women's Business Enterprises Commitment

(a) If your Scope of Services (Work Program) is solely limited to social service (including, but not limited to, job training and placement, education, child day care, emergency shelter, home-delivery meals and health care), you need not comply with the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "**MBE/WBE Ordinance**"), Municipal Code Section 2-92-420 et

seq. or with Section 2-92-586 (Contracts-Firms Owned or Operated by Individuals with Disabilities) of the Municipal Code.

(b) If, however, your Scope of Services (Work Program) includes construction, renovation, rehabilitation or facility enhancement, you must comply with the MBE/WBE Ordinance and with Section 2-92-586 of the Municipal Code, except to the extent waived by the Chief Procurement Officer.

3.6 Insurance. You must provide and maintain at your own expense during the term of this Agreement and any time period following expiration if you are required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit E of this Agreement, insuring all operations related to this Agreement. You must submit Certificates of Insurance of the required coverages **prior** to this Agreement being fully executed to the email address and/or website location specified by the City.

3.7 Indemnification

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

- (i) injury, death or damage of or to any person or property;
- (ii) any infringement or violation of any property right (including any patent, trademark or copyright);
- (iii) your failure to pay or perform or cause to be paid or performed your covenants and obligations as and when required under this Agreement or otherwise, including your failure to pay or perform your obligations to any Subcontractor, employee, agent or vendor;
- (iv) the City's exercise of its rights and remedies under Section 9.2, Remedies, and
- (v) injuries to or death of any employee of yours or any Subcontractor under any workers compensation statute.

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

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

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

(e) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during your

performance of Services beyond the term. You acknowledge that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by your duties under this Agreement, including the insurance requirements in Exhibit E of this Agreement.

3.8 Ownership of Documents. All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to you under this Agreement are property of the City, including, as further described in Section 3.9, Copyright Ownership, all copyrights inherent in them or their preparation. During performance of your Services, you are responsible for any loss or damage to the Deliverables, data, findings or information while in your or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at your expense. If not restorable, you must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 3.7, Indemnification.

3.9 Copyright Ownership. You and the City intend that, to the extent permitted by law, the Deliverables to be produced by you at the City's instance and expense under this Agreement are conclusively deemed "**works made for hire**" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire," you hereby irrevocably grant, convey, bargain, sell, assign, transfer and deliver to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. You will, and will cause all of your Subcontractors, employees, agents and other persons within your control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. You warrant to the City, its successors and assigns, that on the date of transfer you are the lawful owner of good and marketable title in and to the copyrights for the Deliverables and have the legal rights to fully assign them. You further warrant that you have not assigned and will not assign any copyrights and that you have not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that you are not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. You warrant that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

3.10 Records, FOIA, Locals Records Act Compliance and Audits

(a) Records

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

(ii) You must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement and, if later, (a) until any related litigation, claim or audit started during such 5-year period is finally resolved and (b) 4 years after disposing of any real property and Personal Property bought with funds under this Agreement. You must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 11, Notices.

(iii) You must maintain and make available to the City such information necessary to assist the City in its compliance with all applicable laws including dates and reports regarding your activities. You must maintain all documents pertaining to this Agreement including all financial, statistical, property and participant information documentation.

(A) The City has the authority to make physical inspections of the premises used by you in the performance of your Services under this Agreement and to require such physical safeguards to safeguard the property and/or equipment authorized by this Agreement including requiring locks, alarms, safes, fire extinguishers and sprinkler systems.

(B) Further, the City has the authority to be present at any and all meetings held by you, including staff meetings, board of directors meetings, advisory committee meetings and advisory board meetings, if an item relating to this Agreement is to be discussed.

(iv) You must maintain and provide to the City the following information and documents within the time periods indicated: (A) prior to this Agreement being fully executed, a copy of the executed lease for any real property used by you in connection with the Services, an affidavit stating whether the landlord is a Related Party (as defined below), and with respect to any insurance, utility or other costs not based on your actual use, documentation satisfactory to the City in its sole discretion supporting the allocation of these costs to you; (B) within six months after the end of your fiscal year, annual financial statements that include a statement of your financial position and statement of activities, and a trial balance; (C) within 30 days after the transaction occurs, a report of any transaction between you and any Related Party. For purposes of this Section 3.10(a)(iv), "**Related Party**" means any of your board members, officers or employees, and any relative of any of your board members, officers or employees.

(v) You acknowledge that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., as amended ("**FOIA**"). FOIA requires the City to produce records (as defined in FOIA) in response to a FOIA request in a short period of time, unless the records requested are exempt under FOIA. If the City asks you to produce records within the scope of FOIA, then you covenant to comply with such request within 48 hours of the date of such request. Your failure to timely comply with such request will be a breach of this Agreement. Documents that you submit to the City under this Section or otherwise during the term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents that you submit to be treated as a trade secret or information that would cause competitive harm, FOIA requires that you mark any such documents as "proprietary, privileged or confidential." If you mark a document as "proprietary, privileged and confidential", then the City will evaluate whether such document may be withheld under FOIA. The City, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

(vi) You acknowledge that the City is subject to the Local Records Act, 50 ILCS 205/1 et. seq, as amended (the "**Local Records Act**"). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, you covenant to use your best efforts consistently applied to assist the City in its compliance with the Local Records Act concerning records arising under or in connection with this Agreement and the Services contemplated in the Agreement.

(b) **Audits**

(i) You and any of your Subcontractors must furnish the Department with all information that may be requested pertaining to the performance and cost of the Services. You must maintain records showing actual time devoted and costs incurred. You must keep books, documents, paper, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of your Services.

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

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

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

(v) The City may in its sole discretion audit your records or those of your Subcontractors, or both, at any time during the term of this Agreement or within five years after the Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that 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 Agreement 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 Agreement 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.

If the City is unable to make a determination regarding overcharges to the City as a result of your not having maintained records as required under this Agreement, you must promptly reimburse the City for some or all of the cost of the audit, as determined in the sole discretion of the City. Your failure to reimburse the City in accordance with this Section 3.10 is an event of default under Section 9.1, Events of Default Defined, and you will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

3.11 Confidentiality

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

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

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

(d) To the extent not defined herein, the capitalized terms below and in Exhibit F will have the same meaning as set forth in the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations (“**HIPAA**”). See 45 CFR parts 160, 162 and 164. You and all your Subcontractors must comply with HIPAA and all rules and regulations applicable to you or them. You must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16), the Illinois Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 through 17) and all other Illinois state statutes concerning the confidentiality, preservation, Use, and Disclosure of Protected Health Information and the rules and regulations promulgated under those state statutes. If you fail to comply with the applicable provisions under HIPAA and the Illinois state statutes, rules and regulations concerning the confidentiality, preservation, Use, and Disclosure of Protected Health Information, such failure will constitute an event of default under the Business Associate Agreement contained in Exhibit F for which no opportunity for cure will be provided. Additionally, if you are a Business Associate you must comply with all requirements of HIPAA applicable to Business Associates including the provisions contained in Exhibit F. You shall maintain for a minimum of six (6) years all Protected Health Information.

3.12 Assignments and Subcontracts. You must not assign, delegate or otherwise transfer all or any part of your rights or obligations under this Agreement or any part of it, unless otherwise provided for in this Agreement or without the express written consent of the City. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the City operate to relieve you of any of your obligations or liabilities under this Agreement.

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

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

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

Under Municipal Code Section 2-92-245, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement. Any such payment has the same effect as if the City had paid you that amount directly. Such payment by the City to your Subcontractor under no circumstances operates to relieve you of any of your obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

The City reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor.

ARTICLE 4. TERM OF PERFORMANCE

4.1 Timeliness of Performance

(a) You must provide the Services and Deliverables within the term and within the time limits required under this Agreement, pursuant to Exhibit B. **Further, you acknowledge that TIME IS OF THE ESSENCE and that your failure to comply with the time limits described in this Section 4.1 may result in economic or other losses to the City.**

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

4.2 Agreement Extension Option. The City may at any time before this Agreement expires elect to extend this Agreement for up to 3 additional periods, each period not to exceed one year, under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to you. You acknowledge that this Agreement does not create any expectation of renewal or extension.

ARTICLE 5. COMPENSATION

5.1 Basis of Payment. You will be compensated for Services performed and costs incurred and paid directly by you pursuant to the Budget, which is attached to this Agreement as Exhibit A and incorporated by reference as if fully set forth herein. Requests for budget revisions which do not affect the Maximum Compensation or Committed Compensation must be submitted for review and approval to the Department no later than two calendar months before the end of the Term of the Agreement. For example, if the Term of the Agreement expires December 31, then requests for budget revisions, if any, must be submitted no later than the preceding October 31. If the Department approves and signs the request for budget revision, the Department will forward the request to the City Comptroller for final review, approval and processing.

5.2 Method of Payment. Using the City's web-based E-Vouchering system or as otherwise instructed by the City, you will submit **MONTHLY** requisitions for reimbursement (each, a "**Requisition**") identifying the payment due for the Services performed and/or costs incurred and paid directly by you in such detail and supported by such documents as required by the City.

You must submit Requisitions within 15 calendar days after the end of the month in which you performed Services and/or incurred and paid costs. The City will reject any Requisition that includes costs that were incurred or paid by any party other than you.

The following paragraph applies to any Requisition submitted before the expiration date or earlier termination of this Agreement: The City will use reasonable efforts to respond to your Requisition within 30 calendar days after submission by either (a) processing the payment or (b) notifying you (a "**Deficiency Notice**") of the way in which the Requisition is deficient and the adjustments you must make in order to receive payment. Within 15 calendar days after receiving a Deficiency Notice, and after completing such adjustment, you may resubmit a revised Requisition and the City thereafter will use

reasonable efforts to respond to your revised Requisition within 30 calendar days by either (a) processing the payment or (b) sending you a Deficiency Notice.

The following paragraph applies to any Requisition submitted after the expiration date or earlier termination of this Agreement: The City will use reasonable efforts to respond to your Requisition within 30 calendar days after submission by either (a) processing the payment or (b) sending you a Deficiency Notice. Within 15 days after receiving a Deficiency Notice, and after completing such adjustment, you may resubmit a final revised Requisition.

You waive all rights to payment with respect to any Requisition submitted later than 15 calendar days after the expiration date or earlier termination of this Agreement. The City will not reimburse costs that you incur or pay, or Services you perform, after the expiration date or earlier termination of this Agreement. Further, the City reserves the right to salvage any funds not expended by you by the end of the term of this Agreement.

5.3 Non-Appropriation. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the City. No payments will be made or due to you under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement. The City's obligations hereunder shall cease immediately, without penalty or further payment being required, if the City Council of the City fails to make an appropriation sufficient to fund this Agreement.

If no funds or insufficient funds are appropriated and budgeted in any fiscal period for payments to be made under this Agreement, the City will notify you in writing of such occurrence. The City, at its sole discretion, shall determine whether amounts appropriated are sufficient to continue its obligations under this Agreement. This Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Termination of this Agreement or reduction of compensation resulting from non-appropriation or insufficient appropriation shall be in accordance with Section 13.3, Reduction of Compensation. Any grant is void by operation of law if the City fails to obtain the requisite appropriation to pay the grant in any year in which this Agreement is in effect.

ARTICLE 6. DISPUTES

Except as otherwise provided in this Agreement, you must and the City may bring any dispute arising under this Agreement which is not resolved by the parties to the Chief Procurement Officer for decision based upon the written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room, Chicago, Illinois 60602.) The Chief Procurement Officer will issue a written decision and send it to you by mail. The decision of the Chief Procurement Officer is final and binding. The sole and exclusive remedy to challenge the decision of the Chief Procurement Officer is judicial review by means of a common law writ of certiorari.

ARTICLE 7. COMPLIANCE WITH ALL LAWS

7.1 Compliance with All Laws Generally

(a) You must observe and comply with all applicable laws, ordinances, rules, executive orders and regulations of the federal, state, local and city government, which may in any manner affect the performance of this Agreement, all of which will be deemed to be included in this Agreement the same as though written herein in full. You are responsible for ensuring compliance with all applicable laws, rules and regulations, including but not limited to those specifically referenced herein, and for paying when due all Governmental Charges and obtaining all required licenses, certificates and other authorizations. Except where expressly required by applicable laws and regulations, the City shall not be responsible for monitoring your compliance. Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the

statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(b) You will use the City's online submission process to provide the City with a correctly completed Economic Disclosure Statement and Affidavit ("EDS"), which is incorporated by reference, and further will provide any other affidavits or certifications as may be required by federal, state or local law in the award of public contracts, all of which affidavits and certifications are incorporated by reference. You will cause your Subcontractors or, if a partnership or joint venture, all members of the partnership or joint venture, to submit all required affidavits to the City. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. You and any other parties required by this Section 7.1 to complete an EDS must promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, including changes in ownership, and changes in disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, and failure to promptly provide the updated EDS(s) to the City will constitute an event of default under this Agreement.

You certify, as further evidenced in the EDS, by your acceptance of this Agreement that neither you nor your principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. You further agree by executing this Agreement that you will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If you or any lower tier participant is unable to certify to this statement, you must attach an explanation to the Agreement.

(c) You have the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of any program facility. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending your covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless you have given prior written notice to the City of your intent to contest or object to a Governmental Charge and, unless, at the City's sole option, (i) you shall demonstrate to the City's satisfaction that legal proceedings instituted by you contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the program facility to satisfy such Governmental Charge prior to final determination of such proceedings; and/or (ii) you shall furnish a good and sufficient bond or other security satisfactory to the City in such form and amounts as the City shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the program facility during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest. "**Governmental Charge**" shall mean all Federal, State, county, City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to you, your operations, the program facility or the Services. If you are delinquent in filing and/or paying any Governmental Charges and/or related returns, the City in its sole discretion may continue to reimburse you for Services provided under this Agreement only if you (i) have entered into an installment payment agreement with the applicable authority, (ii) have delivered to the City a copy of such fully-signed installment payment agreement and (iii) remain in good standing therewith. You may not use funds you receive under this Agreement to discharge outstanding Governmental Charges.

(d) To the best of your knowledge and belief, you, your principals and key project personnel: (a) are not presently declared ineligible or voluntarily excluded from contracting with any Federal or State department or agency; (b) have not within a three-year period preceding this Agreement been convicted of any felony; been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; had a civil judgment rendered against them for commission of fraud; been found in violation of Federal or State

antitrust statutes; or been convicted of embezzlement, theft, larceny, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property; and (c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in subparagraph (b) of this certification. Any request for an exception to the provisions of this paragraph must be made in writing, listing the name of the individual, home address, type of conviction and date of conviction.

7.2 Nondiscrimination

In performing the Services under this Agreement, you must comply with applicable laws and regulations prohibiting discrimination against individuals and groups.

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

You must comply with, and the procedures you utilize and the Services you provide under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., as amended and the Civil Rights Act of 1991, P.L. 102-166; Fair Housing Act, 42 U.S.C. § 3601-3619; Executive Order No. 11246, as amended by Executive Order No. 11375 and by Executive Order No. 12086; Executive Order 13160 (2000); the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6106; Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-83 and 1685-86); the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; 41 CFR part 60 et seq. (1990); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193); and all other applicable federal statutes, regulations and other laws.

(b) **State Requirements.** In performing the Services under this Agreement, you must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. and any rules and regulations promulgated thereunder, including, but not limited to, the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A, and all other applicable state statutes, regulations and other laws.

(c) **City Requirements.** In performing the Services under this Agreement, you must comply with the Chicago Human Rights Ordinance, Municipal Code § 2-160-010, and all other applicable City ordinances and rules. Further, you must furnish, and cause every Subcontractor to furnish, such reports and information as may be requested from time to time by the Chicago Commission on Human Relations.

(d) **Subcontractors Required to Comply.** You will incorporate all of the provisions set forth in this Section in all subcontracts entered into with all suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with this Agreement.

You must cause your Subcontractors to execute such certificates as may be necessary in furtherance of these provisions. Such certifications will be attached and incorporated by reference in the applicable subcontracts. If any Subcontractor is a partnership or joint venture, you will also include provisions in your subcontract insuring that the entities comprising such partnership or joint venture will be jointly and severally liable for the partnership's or joint venture's obligations under the subcontract.

7.3 Inspector General. It is your duty and the duty of any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all of your officers, directors, agents, partners, and employees and any such bidder, proposer, contractor, subcontractor or such applicant: (a) to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code and (b) to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. You represent that you understand and will abide by all provisions of Chapters 2-56 and 2-55 of the Municipal Code and that you will inform subcontractors of this provision and require their compliance.

7.4 Business Relationships with Elected Officials. Pursuant to Section 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 Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code.

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

7.5 Chicago “Living Wage” Ordinance

(a) **Not-for-Profit Corporations:** If you are a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and are recognized under Illinois not-for-profit law, then the provisions of Sections (b) through (f) below do not apply.

(b) 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**”).

(c) Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- i. If you have 25 or more full-time employees, and
- ii. If at any time during the performance of this Agreement, you and/or any Subcontractor or any other entity that provides any portion of the Services (collectively “**Performing Parties**”) use 25 or more full-time security guards, or any number of other full-time Covered Employees, then
- iii. You must pay your Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in

accordance with this provision (the "**Base Wage**") for all Services performed under this Agreement.

(d) Your obligation to pay, and to assure payment of, the Base Wage will begin at any time during the time for performance of this Agreement when the conditions set forth in C.i. and C.ii. above are met, and will continue until the end of the time for performance of this Agreement.

(e) As of July 1, 2014, the Base Wage became \$11.93 per hour, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. At all times during the time for performance of this Agreement, 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 Services done under this Agreement, 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.

(f) 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 your Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

7.6 Compliance with Environmental and Safety Laws. You shall be subject to, obey and adhere to any and all federal, state and local laws, statutes, ordinances, codes, rules, regulations and executive orders relating to public health and safety and the environment as are now or may be in effect during the term of this Agreement which may be applicable to you, including but not limited to the following Sections of the Municipal Code: Section 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560, whether or not in the performance of this Agreement.

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

ARTICLE 8. SPECIAL CONDITIONS

8.1 Warranties and Representations. You acknowledge, represent, warrant and covenant, as of the date of this Agreement and throughout the Term, that:

(a) you are appropriately licensed and/or certified under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license and/or certification is required by law and for which you are not appropriately licensed and/or certified;

(b) no officer, agent or employee of the City is employed by you or has a financial interest directly or indirectly in this Agreement or the compensation to be paid, except as may be permitted in writing by the City's Board of Ethics; that no payment, gratuity or offer of employment will be made by or on behalf of any Subcontractors of any tier, as an inducement for the award of a subcontract or order; you acknowledge that any agreement entered into, negotiated or performed in violation of any of the provisions of City's Ethics Ordinance, Municipal Code § 2-156 et seq., is voidable by the City; in accordance with 41 U.S.C. § 22, you must not admit any member of or delegate to the United States Congress to any share or part of the Services or the Agreement, or any benefit derived therefrom;

(c) you are financially solvent; you and each of your employees, agents and Subcontractors of any tier are competent to perform the Services required under this Agreement; and you are legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;

(d) you will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of the Services under this Agreement;

(e) you and your Subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City of Chicago;

(f) you have carefully examined and analyzed the provisions and requirements of this Agreement; you understand the nature of the Services required; from your own analysis you have satisfied yourself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and you warrant that you can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;

(g) you and, to the best of your knowledge, your Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code, the Illinois Criminal Code, 720 ILCS 5/33E-1, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;

(h) you and your Subcontractors understand and will abide by all provisions of Chapter 2-26-010 et seq. of the Municipal Code;

(i) any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Section 9.1, Events of Default Defined, and Section 9.3, Early Termination;

(j) any violation of Chapter 1-21 of the Municipal Code, False Statements, is also cause for termination under Sections 9.1 and 9.3;

(k) neither you nor any Affiliate is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, 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: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List; and

(l) you are current as to the filing and payment of any Governmental Charges (as defined in Section 7.1(c), Compliance with all Laws Generally, and/or related returns and you are not delinquent in your payment of Governmental Charges.

8.2 Ethics

(a) In addition to the foregoing warranties and representations, you warrant:

(i) no officer, agent or employee of the City is employed by you or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under the Municipal Code (Chapter 2-156).

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to you or higher tier

Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(b) You further acknowledge that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

8.3 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 under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by you is the joint and several obligation or undertaking of each such individual or other legal entity.

8.4 Business Documents. At the request of the City, you must provide copies of your latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

8.5 Conflicts of Interest

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

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

(c) Upon the request of the City, you must disclose to the City your past client list and the names of any clients with whom you have an ongoing relationship. You are not permitted to perform any Services for the City on applications or other documents submitted to the City by any of your past or present clients. If you become aware of a conflict, you must immediately stop work on the assignment causing the conflict and notify the City.

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

(e) You further covenant that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Services or have access to any confidential information, as described in Section 3.11, Confidentiality. If the City, by the Commissioner in his reasonable judgment, determines that any of your Services for others conflict with the Services you are to render for the City under this Agreement, you must terminate such other services immediately upon request of the City.

(f) Furthermore, if any federal funds are to be used to compensate or reimburse you under this Agreement, you represent that you are and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. § 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, you must execute a Certification Regarding Lobbying, which is part of the EDS and incorporated by reference as if fully set forth here.

(g) You shall establish safeguards to prohibit officers, directors, agents, employees and family members from using positions of employment for a purpose that is, or gives the appearance of, being motivated by a desire for a private gain for themselves or others, particularly those with whom they have family business or other ties. Safeguards; evidenced by rules or bylaws, shall be established to prohibit persons from engaging in actions, which create or which appear to create a conflict of interest as described herein.

8.6 Non-Liability of Public Officials. You and any of your assignees or Subcontractors must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

8.7 Technical Assistance. You must attend technical assistance session(s) sponsored by the City during the term of this Agreement.

8.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Agreement may be delivered by the exchange of signed signature pages, by facsimile transmission, by e-mail with a pdf copy or other replicating image attached, or by uploading to the City's web-based contracting portal if you are a registered user of such portal, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page

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

9.1 Events of Default Defined. In addition to any others mentioned elsewhere in this Agreement, the following constitute events of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by you to the City.
- B. Any material failure by you to perform any of your obligations under this Agreement including, but not limited to, the following:
 - i. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;
 - ii. Failure to have and maintain all professional licenses required by law to perform the Services;
 - iii. Failure to timely perform the Services;
 - iv. Failure to perform the Services in a manner satisfactory to the City, or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - v. Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;

- vi. Discontinuance of the Services for reasons or circumstances within your reasonable control;
 - vii. Failure to comply with any other material term or condition of this Agreement including, but not limited to, the provisions concerning insurance, compensation, reporting, monitoring, licensing and nondiscrimination;
 - viii. Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is no longer complete or accurate, including changes in ownership, and to provide the updated EDS(s) to the City as provided under Section 7.1(b), *Compliance with all Laws Generally*; and
 - ix. Any other acts specifically stated in this Agreement as constituting an act or event of default.
- C. Your default under any other agreement you may presently have or may enter into with the City during the Term. You consent that in the event of a default under this Agreement, the City may also declare a default under any other agreements with the City.
- D. Your failure to comply with Section 7, *Compliance with all Laws*, in the performance of the Agreement.
- E. Your violations of City ordinance(s) unrelated to performance under the Agreement that in the opinion of the Commissioner indicate a willful or reckless disregard for City ordinances and regulations.
- F. Any action or failure to act by you that causes the City to be in violation of any agreements it has with Federal or State departments or agencies.
- G. Any change in ownership or control of you without the prior written approval of the Commissioner (when such prior approval is permissible by law), which approval the Commissioner will not unreasonably withhold.
- H. Your failure, or the failure by any party that is a Controlling Person (defined in Section 1-23-010 of the Municipal Code) with respect to you, to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code; such failure shall render this Agreement voidable or subject to termination, at the option of the Chief Procurement Officer. You agree that your failure to maintain eligibility (or failure by any Controlling Person with respect to you to maintain eligibility) to do business with the City in violation of Section 1-23-030 of the Municipal Code shall constitute an event of default.

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

The Commissioner will give you written notice of the default, either in the form of a cure notice ("**Cure Notice**"), or, if no opportunity to cure will be granted, a default notice ("**Default Notice**"). If the Commissioner gives a Default Notice, he will also indicate any present intent the City may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the City decides not to terminate, this decision will not preclude the City from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Commissioner may give a Default Notice if, within the cure period given in a Cure Notice, in the sole opinion of the City, you fail to effect a cure or fail to commence and continue diligent efforts to cure the event of default. When a Default Notice with intent to terminate is given as provided in this Section 9.2 and Article 11, *Notices*, you must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City.

After giving a Default Notice, the City may invoke any or all of the following remedies:

- (a) The right to take over and complete the Services, or any part of them, at your expense and as agent for you, either directly or through others, and bill you for the cost of the Services, and you must pay the difference between the total amount of this bill and the amount the City would have paid you under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for you under this Section 9.2;
- (b) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
- (c) The right of specific performance, an injunction or any other appropriate legal or equitable remedy;
- (d) The right to money damages;
- (e) The right to withhold all or any part of your compensation under this Agreement;
- (f) The right to deem you non-responsible in future contracts to be awarded by the City; and
- (g) The right to declare default on any other contract or agreement you may have with the City.

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

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

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

After the notice is received, you must restrict your activities, and those of your Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 5, Compensation, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and you must attempt to agree on the amount of compensation to be paid to you, but if not agreed on, the dispute must be settled in accordance with Article 6, Disputes. The payment so made to you is in full settlement for all Services satisfactorily performed under this Agreement.

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

If the City's election to terminate this Agreement for default under Sections 9.1 and 9.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9.3.

9.4 Suspension. The City may, at any time, request that you suspend the Services, or any part of them, (a) by giving 15 calendar days prior written notice to you, (b) upon no notice in the event of emergency, or (c) upon no notice if the City determines that immediate suspension is necessary because of a serious risk of: (i) substantial injury to property or loss of project funds; or (ii) violation of a Federal, State, or local criminal statute; or (iii) if staff or participants' health and safety are at risk. No costs incurred after the effective date of such suspension are allowed. You must promptly resume your performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Commissioner and such equitable extension of time as may be mutually agreed upon by the City and you when necessary for continuation or completion of Services. Any additional costs or expenses you actually incur as a result of recommencing the Services must be treated in accordance with the compensation provisions under Article 5, Compensation.

No suspension will, in the aggregate, exceed a period of 45 calendar days within any one contract year unless the City has declared a summary suspension and the conditions creating the summary suspension have not been corrected. If the total number of days of suspension exceeds 45 days, you by written notice to the City may treat the suspension as an early termination of this Agreement by the City under Section 9.3, Early Termination.

9.5 Right to Offset

(a) In connection with performance under this Agreement, the City may offset any incremental costs and other damages the City incurs in any or all of the following circumstances:

- (i) if the City terminates this Agreement for default or any other reason resulting from your performance or non-performance;
- (ii) if the City exercises any of its remedies under Section 9.2, Remedies; or
- (iii) if the City has any credits due or has made any overpayments under this Agreement.

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

(b) As provided under Section 2-92-380 of the Municipal Code and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by you to the City, as those terms are defined in Section 2-92-380.

(c) In connection with any liquidated or unliquidated claims against you, without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in

an amount equal to the amount of any liquidated or unliquidated claims that the City has against you unrelated to this Agreement. When the City's claims against you are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse you to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

ARTICLE 10. GENERAL CONDITIONS

10.1 Entire Agreement

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

(b) **No Collateral Agreements.** You acknowledge that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced you to enter into this Agreement or has been relied upon by you, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

(c) **No Omissions.** You acknowledge that you were given ample opportunity and time and were requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that you might request inclusion in this Agreement of any statement, representation, promise or provision that you desired or on which you wished to place reliance. You did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, you relinquish the benefit of any such omitted statement, representation, promise or provision and are willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

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

10.3 Amendments.

(a) This Agreement is subject to such modifications as the City determines may be required by changes in Federal, State or local law or regulations applicable to this Agreement, including without limitation as described in Section 11(b), *Notices*. Any such required modification shall be incorporated into and become part of this Agreement as if fully set forth herein.

(b) Except as provided in Section 9.3, *Early Termination*, or in Section 10.3(a), *Amendments*, no changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by you and the City, or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 10.3.

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

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

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

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

10.7 Cooperation. You must at all times cooperate fully with the City and act in the City's best interests. You agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as the City in its sole discretion deems necessary or appropriate to carry out the terms, provisions and intent of this Agreement. By way of example and without limitation, within 15 calendar days after the request of the City, you shall execute and deliver, and you shall not revoke, any tax information authorization or similar form authorizing the City to inspect and/or receive your confidential information from any applicable tax authority. If this Agreement is terminated for any reason, or if it is to expire on its own terms, you must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of your own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

10.8 Waiver. Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance. Whenever under this Agreement the City by a proper authority waives 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 a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to you in writing.

10.9 Independent Contractor.

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

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

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

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

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

(b) The City is subject to the June 24, 2011 "City of Chicago Hiring Plan" (the "**2011 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2011 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

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

(d) You will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(e) In the event of any communication to you by a City employee or City official in violation of paragraph (c) above, or advocating a violation of paragraph (d) above, you will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("**IGO Hiring Oversight**"), and also to the head of the Department. You will also cooperate with any inquiries by IGO Hiring Oversight related to this Agreement.

10.10 No City Obligation to Third Parties. This Agreement is made for the sole benefit of the City and you and the respective successors and assigns of the City and you and no other party shall have any legal interest of any kind hereunder or by reason of this Agreement. Whether or not the City elects to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third party by reason of this Agreement or any of the City's actions or omissions pursuant hereto or otherwise in connection herewith.

10.11 Notice of Change in Circumstances. If you, your parent or related corporate entity, becomes a party to any litigation, investigation or transaction that may reasonably be considered to have a material impact on your ability to perform under this Agreement, you must immediately notify the City in

writing. You must also notify the Department regarding incidents that significantly impact the health and safety of clients or incidents that could result in the interruption of service. You must follow procedures provided by the Department for reporting incidents.

You certify that you are not currently operating under or subject to any cease and desist order, or subject to any informal or formal regulatory action, and, to the best of your knowledge, that you are not currently the subject of any investigation by any state or federal regulatory, law enforcement or legal authority. Should you become the subject of an investigation by any state or federal regulatory, law enforcement or legal authority, you shall promptly notify the City of any such investigation. You acknowledge that should you later be subject to a cease and desist order or Memorandum of Understanding, or found in violation pursuant to any regulatory action or any court action or proceeding before any administrative agency, that the City is authorized to declare you in default of this Agreement and suspend or terminate this Agreement.

ARTICLE 11. NOTICES

(a) Except as provided in Article 11(B), all notices and communications to be provided by you and/or by the City under this Agreement must be in writing and may be delivered personally, by overnight courier or by First Class certified mail, return receipt requested, with postage prepaid and addressed as follows:

If to the City: The Department's mailing address noted on the cover page to this Agreement, with copies to: Department of Law, City Hall, Room 600, 121 North LaSalle Street, Chicago, Illinois 60602, Attention: Corporation Counsel

If to you: Your mailing address noted on the cover page to this Agreement.

Notices and communications delivered by mail are deemed received 3 business days after mailing in accordance with this Article 11. Communications delivered personally are deemed effective upon receipt. Those sent via overnight courier are deemed effective on the next business day. Refusal of delivery has the same effect as delivery.

(b) From time to time the City may notify you of information including, without limitation, the email address and/or website location to which you must submit certificates of insurance. The City may deliver such notices to you to the business email address listed on the cover page to this Agreement, or such other email address of which you have notified the Department under Article 18, *Internet Access and Email Address*. Such notices shall be deemed received upon transmission by the City and the information in such notices shall be incorporated into and become part of this Agreement as if fully set forth herein.

(c) You must notify the City of any significant change in your organizational structure. Significant changes include, but are not limited to, changes in:

- i. the official(s) to whom notice regarding the Agreement is provided and their mailing address;
- ii. the officers of the corporation, including president, chairman, vice president, treasurer, secretary; and
- iii. your key staff and/or your program sites, including executive director, site director, fiscal director; name, ownership, Federal employer identification number (FEIN), DUNS number or taxpayer certification; legal status (including not-for-profit status); and site address or agency official address or telephone numbers.

Such communication must be directed within 10 calendar days of such occurrence (or, in the case of changes in legal status (including not-for-profit status), address, DUNS number, name, ownership, FEIN or taxpayer certification, 45 days in advance), to the Department's Mailing Address noted on the cover page of this Agreement.

No promise or undertaking made in this Agreement is an assurance that the City agrees to continue this Agreement should you reorganize, change owners, or otherwise substantially change the character of your corporate or other business structure.

ARTICLE 12. AUTHORITY

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

ARTICLE 13. ADDITIONAL COMPENSATION PROVISIONS

13.1 Non-Expendable Personal Property. You must receive written authorization from the City prior to purchasing tangible personal property having a useful life of more than one year with an acquisition cost of \$5,000 or more per unit ("**Personal Property**"), or as otherwise determined by the Department. All Personal Property will be the property of the City. You must maintain a current inventory listing of Personal Property and must deliver a copy of the listing to the City annually. You must receive written authorization from the City before using funds under this Agreement to improve or purchase real property. When this Agreement expires or is terminated, you must return to the City (a) the balance of any funds received under this Agreement and any accounts receivable attributable to those funds and (b) all Personal Property. However, upon receipt of the final inventory of all Personal Property, the City may elect to allow Personal Property to remain in your possession if the City, in its sole discretion, determines that the Personal Property is necessary for the performance of any new or other services by you for the City.

13.2 Allowable Costs. All allowable costs, although approved by the City's Comptroller's Office, are not considered final and may be disallowed upon the completion of audits performed by the City. Allowable costs are the costs set forth in the Budget. In the event of such disallowance, you must refund the amount disallowed to the City.

13.3 Reduction of Compensation. If, after this Agreement is signed, anticipated local and/or state funding is reduced for any reason, or the City determines in its sole discretion that your performance is not satisfactory, then the City reserves the right upon written notice to you to reduce or modify the Maximum Compensation, the Committed Compensation, the time for performance and/or the number of unfilled participant slots. If local and/or state appropriations are reduced to such an extent that, in the sole discretion of the City, no funds will be available to compensate you under this Agreement, then the City will provide you notice of such occurrence. The notice will constitute notice of early termination in accordance with this Agreement.

If the Maximum Compensation and/or Committed Compensation is reduced, you will have 30 calendar days from the date of the written notice to submit a revised work program, budget or any other necessary document ("**Revised Submittals**") to the City reflecting the reduction in Maximum Compensation and/or Committed Compensation, as applicable, and accordingly modifying the Services to be performed. The City will have the discretion to modify the Revised Submittals as it may deem appropriate in order to realize the goals of this Agreement. The Revised Submittals will be reviewed by the Department. After (a) final approval and signature by the Department of the Revised Submittals and (b) final review and approval by the City Comptroller of the revised budget included in the Revised Submittals, the Revised Submittals will become a part of this Agreement superseding the relevant previous documents. If you fail to comply with the written notice or submit Revised Submittals which are not accepted by the City, you must perform this Agreement as originally executed for the reduced Maximum Compensation or, if less, the reduced Committed Compensation.

ARTICLE 14. RELIGIOUS ACTIVITIES

(a) You warrant that you will not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of or while carrying out the funded programs or Services.

(b) You warrant that if you do engage in inherently religious activities, such as worship, religious instruction, or proselytization,

- i. such activities will always be conducted separately, in time or location, from the funded programs or Services; and
- ii. any participation in such activities on the part of beneficiaries of the funded programs or Services must be wholly voluntary.

(c) You warrant that you will not discriminate against a beneficiary or prospective beneficiary of the funded programs or Services on the basis of religion, religious belief, or participation or nonparticipation in any inherently religious activities.

(d) If the Agreement involves any grant of funds for the acquisition, construction, or rehabilitation of structures, you warrant:

- i. The room or space that the grant funds will be used to acquire, construct or rehabilitate is not your primary place of worship; and
- ii. Grant funds will be used only for those portions of the acquisition, construction, or rehabilitation of the structures that are attributable to eligible activities; and
- iii. If in the future the structure is used for inherently religious activities or otherwise ceases being used for eligible activities, you will adhere to the rules on real property use and disposition and government reimbursement found in the applicable laws and regulations.

(e) With respect to a child receiving Services, for purposes of this section, "beneficiary" shall include such child and, in addition, his or her parents, guardians, other responsible adults and family members.

ARTICLE 15. ACKNOWLEDGMENT

You must confer with the City in advance of any public announcement, promulgation or other distribution with respect to the Services. You must clearly acknowledge the co-sponsorship of the City on all promotional materials including brochures, flyers, written or electronic public notices, news releases, public service announcements, acknowledgments at any special events intended to promote the Services, or solicitation of the private sector. You must not attribute any statement to the City without the City's prior written approval. Further, all reports, maps and other documents completed as part of this Agreement, other than documents exclusively for internal use within the City, must contain the following information in a conspicuous place near the front of the report, map or document: name of City, month and year of preparation, and name of the project or portion of the project.

ARTICLE 16. COMPLIANCE WITH ACCESSIBILITY LAWS

You warrant that all Services and programs produced under this Agreement must comply with all accessibility standards for persons with disabilities or environmentally limited persons including, but not limited to the following: Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* and Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94. In the event that the above cited standards are inconsistent, you must comply with the standard providing greater accessibility.

ARTICLE 17. PROHIBITION ON CERTAIN CONTRIBUTIONS - MAYORAL EXECUTIVE ORDER No. 2011-4

Neither you nor any person or entity who directly or indirectly has an ownership or beneficial interest in you of more than 7.5% ("**Owners**"), spouses and domestic partners of such Owners, your Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("**Sub-owners**") and spouses and domestic partners of such Sub-owners (you and all the other preceding classes of persons and entities are together, the "**Identified**

Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "**Mayor**") or to his political fundraising committee during (i) the bid or other solicitation process for this Agreement or Other Contract, including while this Agreement or Other Contract is executory, (ii) the term of this Agreement or any Other Contract between City and you, and/or (iii) any period in which an extension of this Agreement or Other Contract with the City is being sought or negotiated.

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

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

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

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

If you violate this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Commissioner may reject your bid.

For purposes of this provision:

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

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

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

ARTICLE 18. INTERNET ACCESS AND EMAIL ADDRESS

You must have Internet access at the site level. Internet access may be either dial-up or high speed/DSL. You must maintain at a minimum, one business email address listed on the cover page to this Agreement that will be the primary receiving point for all email correspondence from the Department. You may list additional addresses when you sign this Agreement. The additional addresses may be for a specific department/division of yours or for specific employees. You must notify the Department of any email address changes within five business days before the effective date of the change. You may use the City's web-based contracting portal to update your email address if you are a registered user of such portal.

ARTICLE 19. EXCLUDED PROVIDER WARRANTY AND INDEMNITY

You hereby represent and warrant that you and your employees and agents are not now and at no time have been excluded from participation in any federally funded health care program, including Medicare and Medicaid. This is an ongoing obligation of yours to ensure that you are not employing or contracting with individuals that have been sanctioned by the U.S. Department of Health and Human Services Office of Inspector General (“**OIG**”) or barred from federal procurement programs. You shall check the **OIG**’s cumulative sanctions reports and General Series Administration website on a monthly basis. You hereby agree to immediately notify the City of any threatened, proposed, or actual exclusion from any such program of yours or any such program of any of your employees or agents. In the event that you or any of your employees or agents performing Services hereunder are excluded from participation in any federally funded health care program during the term of this Agreement, or at any time after the effective date of this Agreement, you shall be deemed to be in breach of this section and this agreement shall, as of the effective date of such exclusion or breach, automatically terminate. You shall indemnify and hold harmless the City against all actions, claims, demands and liabilities, and against all loss, damage, and costs and expenses, including reasonable attorney’s fees, arising directly or indirectly, out of any violation of this section or due to the exclusion of you or any of your employees and agents from a federally funded health care program, including Medicare or Medicaid.

Exhibit E
Delegate Agency Grant Agreement
Corporate Funds

Insurance Requirements & Insurance Certificate

A. The kinds and amounts of insurance required are as follows:

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance, or equivalent with limits of not less than \$500,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or Services.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work or Services to be performed, you must provide Automobile Liability Insurance with limits of not less than \$300,000 per occurrence for bodily injury and property damage.

4) Professional Liability

When any professional consultants perform work or Services in connection with this Agreement, Professional Liability Insurance covering errors, omissions, or negligent acts, must be maintained with limits of not less than \$500,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

5) Medical/Professional Liability

When any medical Services are performed in connection with this Agreement, Medical/Professional Liability Insurance must be provided to include coverage for errors, omissions and negligent acts related to the rendering or failure to render professional, medical or health Services with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of 2 years.

6) Builders Risk

When you perform any construction, including improvement, betterments, and/or repairs, you must provide All Risk Builders Insurance to cover materials, supplies, equipment, machinery and fixtures that are part of the structure.

B. Related Requirements

If the coverages have an expiration or renewal date occurring during the term of this Agreement, you must furnish renewal certificates to the email address and/or website location specified by the City. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this

Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from you, are not a waiver by the City of any requirements for you to obtain and maintain the specified coverages. You must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve you of your obligation to provide insurance as specified here. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work or Services or terminate this Agreement until proper evidence of insurance is provided.

The Grantee must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed.

All deductibles or self insured retentions on referenced insurance coverages must be borne by you.

You hereby waive and agree to require your insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

The coverages and limits furnished by you in no way limit your liabilities and responsibilities specified within this Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by you under this Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If you are a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

You must require all Subcontractors to provide the insurance required in this Agreement or you may provide the coverages for Subcontractors. All Subcontractors are subject to the same insurance requirements of you unless otherwise specified in this Agreement.

If you or Subcontractors desire additional coverages, the party desiring additional coverages is responsible for the acquisition and cost of such additional protection.

Notwithstanding any provisions in this Agreement to the contrary, the City of Chicago's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

C. If you need additional information related to insurance, please call the office of the City Comptroller, at (312) 744-7923.

Exhibit F
Delegate Agency Grant Agreement
Corporate Funds

COMPLIANCE WITH REQUIREMENTS IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT, AND IMPLEMENTING REGULATIONS BUSINESS ASSOCIATE AGREEMENT

The City of Chicago ("City") and Subgrantee ("Business Associate") agree to the following terms and conditions, which are intended to comply with the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations:

The terms below that are capitalized and in bold have the same meanings as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, which is part of the American Recovery and Reinvestment Act of 2009, and the regulations promulgated thereunder, including the privacy, security, breach, omnibus, and enforcement rules, as each may be amended from time to time (collectively, "HIPAA"). See 45 CFR parts 160 and 164.

Specifically, the following terms used in the Business Associate Agreement shall have the same meaning as in HIPAA: **Breach, Business Associate, Data Aggregation, Designated Record Set, Disclosure, Financial Remuneration, Fundraising, Health Care Operations, Individual, Marketing, Minimum Necessary, Protected Health Information ("PHI"), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use**. The term "Breach" has the meaning as set forth in HIPAA when capitalized below, but has the ordinary dictionary meaning when not capitalized below.

For purposes of this Business Associate Agreement, the term "Protected Health Information" or "PHI" includes electronic PHI, also known as ePHI.

1. Interpretation of this Business Associate Agreement. A reference in this Business Associate Agreement to HIPAA means the section in effect or as amended. If there is a dispute as to whether Business Associate is, in fact, a Business Associate, the Business Associate must provide a legal memorandum to the City indicating why the Business Associate does not fall under the definition of Business Associate in HIPAA. If the City disagrees with the legal memorandum regarding the Business Associate's conclusion that Business Associate is not a Business Associate, the City may choose to report a Breach to the Secretary or take other measures as deemed necessary to ensure the City's compliance with HIPAA. Any ambiguity or inconsistency in this Business Associate Agreement shall be resolved in favor of a meaning that permits City to comply with HIPAA.

2. Amendment of this Business Associate Agreement. The parties hereto agree to negotiate in good faith to amend this Business Associate Agreement from time to time as is necessary for City to comply with the requirements of HIPAA and for Business Associate to provide services to City. However, no change, amendment, or modification of this Business Associate Agreement shall be valid unless it is set forth in writing and signed by both parties.

3. Designation of HIPAA Officer(s). Business Associate agrees to designate, in writing, a HIPAA Privacy and Security Officer(s) who will communicate with the City's HIPAA Privacy and Security Officers for purposes of this Business Associate Agreement. Business Associate agrees to notify the City's HIPAA Privacy and Security Officers of such designation and the contact information of such officer(s):

Jennifer Herd
HIPAA Privacy Officer
312-747-9429
hipaaprivacyofficer@cityofchicago.org

Paul Bivian
HIPAA Security Officer
312-744-2250
hipaasecurityofficer@cityofchicago.org

4. Uses and Disclosures of PHI. Business Associate must not use or further disclose Protected Health Information (“PHI”) other than as permitted or required by this Business Associate Agreement, as necessary to perform the services in the underlying Agreement, or as Required By Law.

- a. Business Associate will not sell PHI or use or disclose PHI for the purposes of marketing or fundraising.
- b. Business Associate shall not directly or indirectly receive financial remuneration in exchange for any PHI of an individual or in exchange for making communications regarding treatment or health care operations purposes, unless otherwise allowed in this Business Associate Agreement.
- c. If Business Associate is authorized to use PHI to provide the City with de-identified information, Business Associate is not permitted to use or disclose the de-identified information for purposes other than those specified in the Agreement.
- d. Business Associate may use PHI to provide data aggregation services to the City, relating to the health care operations of the City.
- e. Business Associate may use and disclose PHI received by the Business Associate in its capacity as a Business Associate to the City, if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that, as to any such disclosure, the following requirements are met:
 - i. The disclosure is required by law; or
 - ii. The Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been the subject of a Breach.
- f. Except as otherwise limited in this Business Associate Agreement, Business Associate may use and disclose PHI obtained from or on behalf of the City to perform functions, activities, or services for, or on behalf of, the City as specified in the Agreement, provided that such use or disclosure would not violate HIPAA if done by the City.

5. Minimum Necessary. Business Associate shall use, disclose, or request only the minimum necessary PHI necessary to accomplish the intended purpose of the use, disclosure, or request. Business Associate represents that the PHI used, disclosed, or requested by Business Associate is the minimum necessary to carry out purposes of the Agreement. Prior to any use or disclosure, Business Associate shall determine whether a limited data set would be sufficient for these purposes.

6. Safeguards of PHI. Business Associate must use appropriate safeguards with respect to PHI that it creates, receives, maintains, or transmits on behalf of the City to prevent the use or disclosure of PHI other than as provided for in this Business Associate Agreement. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of HIPAA privacy regulations (45 CFR Part 164, subpart E) and must limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure. The safeguards must also reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that Business Associate creates, receives, maintains, or transmits on the City’s behalf as required by the HIPAA security regulations (45 CFR Part 164, subpart C). Where applicable, Business Associate must use appropriate safeguards and comply with the HIPAA security regulations (45 CFR Part 164, subpart C) with respect to electronic protected health information, to prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement. Where feasible, PHI will not leave the City’s facilities and will be accessed under the supervision of City employees.

7. Applicability of Business Associate Agreement to Subcontractors and Agents. Business Associate must ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information, by entering into a contract or other

arrangement that complies with HIPAA. An agent or subcontractor of a Business Associate is not permitted to use or disclose PHI in a manner that would not be permissible if done by the Business Associate. Business Associate will ensure that its subcontractors and agents to which Business Associate is permitted by this Business Associate Agreement or in writing by the City to disclose PHI agree to implement reasonable and appropriate safeguards to protect PHI. Business Associate will obtain reasonable assurances from any subcontractors and agents to which Business Associate discloses PHI that the subcontractor or agent will hold PHI in confidence and make further uses or disclosures of PHI only for the purpose for which Business Associate disclosed PHI to the subcontractor or agent or as Required By Law.

Business Associate will obtain reasonable assurances that any subcontractor or agent to which Business Associate discloses PHI will notify the Business Associate within 5 calendar days (who will, in turn, notify the City within 5 calendar days, as described below) of any instance in which the subcontractor or agent becomes aware of a Breach of unsecured PHI; possible Breach of unsecured PHI; any security incident of which it becomes aware, including: any attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI; or any attempted or successful interference with agent or subcontractor's system operations of which agent/subcontractor becomes aware.

Agent/subcontractor is not required to report the following types of unsuccessful security incidents: pings and other broadcast attacks on agent/subcontractor's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.

If a delay is requested by a law enforcement official in accordance with 45 CFR 164.412, agent/subcontractor may delay notification to Business Associate for the time period specified in HIPAA. Agent or subcontractor's report will include the information described in 45 CFR 164.404(c) and such other information as the Business Associate or the City may reasonably request.

8. Reporting of Breaches, Potential Breaches, and Security Incidents. Business Associate must report to the City any use or disclosure of the PHI not provided for by this Business Associate Agreement of which it becomes aware, as well as any Breach of Unsecured PHI; potential Breach of unsecured PHI; any security incident of which it becomes aware; any attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI; or any attempted or successful interference with Business Associate's system operations of which Business Associate becomes aware.

Business Associate will make the report to the City's HIPAA Privacy and Security Officers not more than five (5) calendar days after Business Associate discovers such non-permitted use or disclosure, Breach, security incident, or other incident as described above. Business Associate shall provide any reports or notices required by HIPAA as a result of Business Associate's Breach. On behalf of the City, Business Associate will provide such reports or notices to any party or entity (including but not limited to media, Secretary, and individuals affected by the Breach) entitled by law to receive the reports or notices. Business Associate agrees to pay the costs associated with notifying individuals affected by the Breach, which may include, but are not limited to, paper, printing, and mailing costs.

Business Associate is not required to report the following types of unsuccessful security incidents: pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.

If a delay is requested by a law enforcement official in accordance with 45 CFR 164.412, Business Associate may delay notifying City for the time period specified in HIPAA. Business Associate's report will include the information described in 45 CFR 164.404(c) and such other information as the City may reasonably request.

9. Mitigation and Penalties. Business Associate must mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach or of a use or disclosure of PHI by

Business Associate in violation of the requirements of this Business Associate Agreement. Business Associate shall take reasonable steps to put corrective measures in place to prevent future Breaches (such as retraining employees and upgrading security systems). At the City's request, Business Associate shall take reasonable steps to mitigate the harm to affected Individuals whose PHI has been or may have been compromised as a result of a Breach by Business Associate, including obtaining credit monitoring services and offering identity theft insurance. To the extent that the City incurs civil or criminal monetary penalties as a result of a Breach by the Business Associate, the Business Associate agrees to reimburse the City for such penalties.

10. Designated Record Sets - Access. If the Business Associate has PHI in a Designated Record Set, then Business Associate must provide access to or otherwise make available, at the request of the City, and in the time and manner designated by the City, PHI in a Designated Record Set, to the City or, as directed by City, to an Individual or the individual's designee, in order to meet the requirements under 45 CFR 164.524.

11. Designated Record Sets – Amendments. If the Business Associate has PHI in a Designated Record Set, then Business Associate must make any amendments to PHI in a Designated Record Set that the City directs or agrees to pursuant to 45 CFR 164.526 at the request of the City or an Individual, and in the time and manner designated by the City, or take other measures as necessary to satisfy the City's obligations under 45 CFR 164.526.

12. Internal Practices, Books, and Records. Business Associate must make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the City available to the Secretary for purposes of determining compliance with HIPAA. Business Associate also must make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the City available to the City in a time and manner designated by the City, for purposes of the Secretary determining City's compliance with HIPAA.

13. Accounting of Disclosures - Documentation. Business Associate must document the disclosures of PHI and information relating to such disclosures as would be required for City to respond to a request by an individual for an accounting of disclosures of PHI in accordance with HIPAA, specifically 45 CFR 164.528.

14. Accounting of Disclosures – Provision of Information. Business Associate must provide to City or an individual, in time and manner designated by City, information collected which relates to the disclosure of PHI, to permit City to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. If the Business Associate receives a request for accounting of disclosures directly from the individual, the Business Associate must respond to such request for an accounting of disclosures, provide the accounting of disclosures to the individual within the time required by 45 CFR 164.528, and provide the information regarding such request to the City, in the time and manner designated by the City.

15. Survival, Termination, and Return or Destruction of PHI. Upon termination of this Business Associate Agreement for any reason, the Business Associate's obligations under these contractual obligations shall survive termination and remain in effect:

(a) until Business Associate has completed the return or destruction (in accordance with the United States Department of Health and Human Services' Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, or successor guidance documents), at the City's option, of all of the PHI provided by City to Business Associate, or created, maintained, or received by Business Associate on behalf of City, and

(b) to the extent that Business Associate retains any PHI, e.g., Business Associate retains only the PHI which is necessary for its own management and administration or to carry out its legal responsibilities.

Upon the expiration or termination of the underlying Agreement, if feasible, the Business Associate must either:

- (1) return all PHI received from the City, or created, maintained, or received by Business Associate on behalf of the City, which the Business Associate still maintains in any form, to the City or
- (2) destroy it, at the City's option (in accordance with the United States Department of Health and Human Services' Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, or successor guidance documents).

This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate shall require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Business Associate Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Business Associate Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

In the event of a breach of the terms of these contractual obligations, the cure and remedies of the Agreement shall govern. HIPAA's privacy rule (45 CFR § 164.504(e)(2)) requires that the Business Associate will authorize termination of this Business Associate Agreement by the City, if the City determines that the Business Associate has violated a material term of these contractual obligations.

16. Compliance with Obligations. To the extent the Business Associate is to carry out one or more of City's obligation(s) under Subpart E of 45 CFR Part 164, the Business Associate must comply with the requirements of Subpart E that apply to the City in the performance of such obligation(s). Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the City.

17. No Third Party Rights. The terms and conditions of this Business Associate Agreement are intended for the sole benefit of Business Associate and City and do not create any third party rights.

18. Governing Law. To the extent not preempted by federal law, the Agreement shall be governed and construed in accordance with the laws of the State of Illinois.