

# REQUEST FOR PROPOSALS (“RFP”) FOR COMMUNITY ENERGY BENCHMARKING PROGRAM MANAGEMENT

Required for use by:

**CITY OF CHICAGO**  
**Department of Environment**



This RFP distributed by:

**CITY OF CHICAGO**  
**Department of Environment**

All proposals and other communications must be addressed and returned to:  
[EnvironmentRFP@cityofchicago.org](mailto:EnvironmentRFP@cityofchicago.org)

A Pre-Proposal Conference will be held on February 13, 2025, 10:00 AM CST.

Participants may register here: <https://events.gcc.teams.microsoft.com/event/96afdae1-80a2-47ef-94e0-7de3112f8d70@7036cda9-062d-4151-8144-97ddc56e7027>

Attendance is Non-Mandatory but encouraged.

**PROPOSALS MUST BE RECEIVED NO LATER THAN 11:00 P.M., CENTRAL TIME, ON  
MARCH 7, 2025**

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**BRANDON JOHNSON**  
**MAYOR**

**ANGELA TOVAR**  
**COMMISSIONER/  
CHIEF SUSTAINABILITY OFFICER**

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## TABLE OF CONTENTS

	<u>Page</u>
<b>I. GENERAL INVITATION</b> .....	4
<b>A.</b> Purpose of the Request for Proposal .....	4
<b>B.</b> Background.....	5
<b>C.</b> Internet Access to this RFP .....	4
<b>D.</b> RFP Addendum .....	5
<b>II. DEFINITIONS</b> .....	6
<b>III. SCOPES OF SERVICES</b> .....	6
A. Description of Services .....	6
B. Contract Term.....	6
<b>IV. GENERAL INFORMATION AND GUIDELINES</b> .....	6
A. Communications Between the City of Chicago and Respondents .....	6
B. Deadline and Procedures for Submitting Proposals .....	7
C. RFP Information Resources .....	7
D. Procurement Timetable.....	8
E. Transparency Website: Trade Secrets .....	8
<b>V. PREPARING PROPOSALS: REQUIRED INFORMATION</b> .....	8
A. Format of Proposals.....	9
B. Required Contents of Proposal .....	9
<b>VI. EVALUATING PROPOSALS</b> .....	17
A. Evaluation Process .....	17
B. Evaluation Criteria.....	18
<b>VII. SELECTION PROCESS</b> .....	19
<b>VIII. ADDITIONAL DETAILS OF THE RFP PROCESS</b> .....	20
A. Addenda .....	20
B. City’s Rights to Reject Proposals .....	20
C. No Liability for Costs .....	20
D. Prohibition on Certain Contributions.- Mayoral Executive Order No. 2011-4 .....	20
E. False Statements .....	21
F. Policy Prohibiting Sexual Harassment.....	21

## EXHIBITS

- Exhibit 1: Scope of Services & Deliverables
- Exhibit 2: Schedule of Compensation/Itemized Cost Proposal
- Exhibit 3: Company Profile Information
- Exhibit 4: Company References/Client Profile Information
- Exhibit 5: Special Conditions Regarding Minority and Women Owned Business Enterprise (M/WBE) Commitment, including:
  - 1. Attachment A: Assist Agencies
  - 2. Attachment B: Sample Letter to Assist Agencies
  - 3. Schedule B: Affidavit of Joint Venture (M/WBE)
  - 4. Schedule C-1: Letter of Intent from M/WBE to Perform as Subcontractor, Supplier and/or Contractor
  - 5. Schedule D-1: Affidavit of M/WBE Goal Implementation Plan
- Exhibit 6: Online City of Chicago Economic Disclosure Statement and Affidavit and Appendix A (EDS) Instructions and Attachment A, Online EDS Acknowledgement
- Exhibit 7: Contract Insurance Requirements and Insurance Certificate
- Exhibit 8: Registration and Submittal Instruction (Certificate of Insurance)
- Exhibit 9: Sample Professional Services Agreement
- Exhibit 10: Sexual Harassment Policy Affidavit
- Exhibit 11: Municipal Code of Chicago Chapter 18-14 - Building Energy Use Benchmarking
- Exhibit 12: Building Energy Use Benchmarking Rules

## REQUEST FOR PROPOSAL (“RFP”)

for

### COMMUNITY ENERGY BENCHMARKING PROGRAM MANAGEMENT

#### I. GENERAL INVITATION

##### A. Purpose of the Request for Proposal

The City of Chicago (“City”), acting through its Department of Environment (“Department”) seeks Proposals to develop, maintain, manage, and report on building energy benchmarking (“Services”) for covered buildings as defined in Chapter 18-14 of the Municipal Code of Chicago (hereinafter “MCC Chapter 18-14”). At the time of this Request for Proposal (“RFP”), this includes an estimated 3,700 buildings which are greater than 50,000 sq. ft. within its municipal boundaries.

The Services will have an anticipated contract start date of April 1, 2025. The City will facilitate the transfer of data, materials, and work from our current vendor to the selected Respondent (hereinafter “Contractor”) in the time between contract award and contract start.

The vendor selected for this work will provide professional services as described herein (in accordance with Exhibit 1, Scope of Services).

##### B. Background

The Chicago Benchmarking Ordinance (“Ordinance”) was passed in 2013 and the first year of Ordinance implementation and compliance was in 2014. The Ordinance was subsequently revised and expanded by City Council in 2017, adding the Chicago Energy Rating System. The Ordinance, as revised, is codified in MCC Chapter 18-14 (see Exhibit 11). The City, acting through its Department of Business Affairs and Consumer Protection, issued implementing rules for the benchmarking program (see Exhibit 12). Effective, January 1, 2025, City Council transferred oversight and implementation of the program to the Department of Environment.

In the ten years since benchmarking began, the City has seen a compliance rate in excess of 83% each year and emissions reductions in covered buildings of 38%. Information regarding the Ordinance, as well as the most recent benchmarking reports can be found on the City website at <https://www.chicago.gov/city/en/progs/env/building-energy-benchmarking---transparency.html>.

Energy benchmarking serves to raise awareness of energy performance through information and transparency. Energy benchmarking helps to compare energy use to peer facilities with similar uses within the same climate and identify opportunities for retro-commissioning and energy audits.

Entities with demonstrated experience in this area, and with an interest in making their services available to the City, are invited to respond to this RFP.

The objective for the Contractor is to perform all tasks and functions associated with the Services in accordance with Exhibit 1, Scope of Services.

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

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

C. Internet Access to this RFP

All materials related to the RFP will be available on the internet at:  
<https://www.chicago.gov/city/en/progs/env/RFPs.html>.

In the event you do not have download capability, all materials may be obtained from the Department of Environment, 2 N La Salle St, Suite 725. If an alternative to downloading is necessary, please request the materials by emailing [environmentRFP@cityofchicago.org](mailto:environmentRFP@cityofchicago.org).

A Respondent who chooses to download an RFP solicitation instead of picking it up in person will be responsible for checking the aforementioned web site for clarifications and/or addenda, if any. Failure to obtain clarifications and/or addenda from the web site shall not relieve Respondent from being bound by any additional terms and conditions in the clarifications and/or addenda, or from considering additional information contained therein in preparing your Proposal. Note, there may be multiple clarifications and/or addenda. Any harm to the Respondent resulting from such failure shall not be valid grounds for a protest against award(s) made under the solicitation.

D. RFP Addendum

The City reserves the right, after advertisement of the RFP, to refine the Scope of Services, with appropriate notice. Any change(s) which may be required to the original version of the RFP *after* the original version had already been initially advertised and posted, including questions and answers, shall be made in the form of an "Addendum" before the Proposal due date. All Addenda shall be sequentially numbered and be publicly available for download from the above URL.

Further, if, after receipt of Proposals, the City wishes to make refinements to the Scope of Services, it may, depending upon the circumstances, provide the refinement revisions to all Respondents and invite revised Proposals from the Respondents based upon the revised Scope of Services.

## II. DEFINITIONS

**“Agreement”** means the City’s Professional Services 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, as attached in this RFP in Exhibit 9.

**“Commissioner”** means the chief executive officer for the Department of Environment, City of Chicago.

**“Contractor”** means the entity awarded a contract pursuant to the City’s RFP process and includes the Contractor’s subcontractors.

**“Covered Buildings”** means buildings which are greater than 50,000 square feet within the municipal boundaries as defined in Chapter 18-14 of the Municipal Code.

**“Department”** means the City of Chicago Department of Environment.

**“Ordinance”** means collectively the initial City of Chicago Benchmarking Ordinance (SO2013-5385) which establishes Chapter 18-14 of the Municipal Code, the 2017 revision ordinance adding the Chicago Energy Rating System and other changes (SO2017-7060), and the 2024 City Management Ordinance, whereby administration of the benchmarking program was transferred to the Department (SO2024-0013673).

**“Proposals”** means the documents submitted in response to this RFP.

**“Respondent”** means the individuals or business entities submitting a proposal in response to this RFP.

## III. SCOPE OF SERVICES

### A. Description of Services

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

### B. Contract Term

Any contract awarded pursuant to this RFP solicitation shall be for a base contract period of three years plus one extension option of up to two additional years mutually agreed to by both parties.

## IV. GENERAL INFORMATION AND GUIDELINES

### A. Communications Between the City and Respondents

Any question or any request for clarification relating to the RFP content, must be made in writing and sent to [environmentRFP@cityofchicago.org](mailto:environmentRFP@cityofchicago.org) in the format as exemplified below, using an Excel spreadsheet.

Question Submittal format:

ITEM	QUESTION or REQUEST for CLARIFICATION	RFP page and section being referenced
1		
2		

The City will provide its response to all questions and requests for clarifications and post the response at the URL above, as an Addendum to the RFP.

B. Deadline and Procedures for Submitting Proposals

To be assured of consideration, Proposals must be received by the City no later than 11 PM Central Time on February 28, 2025.

Proposals must be sent to the following e-mail address: [environmentRFP@cityofchicago.org](mailto:environmentRFP@cityofchicago.org).

The City may, but is not required, to accept Proposals that are not received by the date and time set forth above. Only the Commissioner is empowered to determine whether to accept or return late Proposals.

C. RFP Information Resources

Respondents are solely responsible for acquiring the necessary information or materials.

Information for preparing a response to this RFP can be located in the following areas of the City's website:

<https://www.chicago.gov/city/en/progs/env/RFPs.html>

- Addenda

[www.cityofchicago.org/Procurement](http://www.cityofchicago.org/Procurement):

- Search MBE/WBE Directory Database

D. Procurement Timetable

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

<b>Key Activity</b>	<b>Target Date</b>
City Issues RFP	2/7
Pre-Proposal Conference	2/13
Post-Conference Questions Due	2/19
Addendum Response to Clarifying Questions	2/21
Proposals Due	3/7

E Transparency Website: Trade Secrets

Consistent with the City's practice of making available all information submitted in response to a public procurement, all proposals, any information and documentation contained therein, any additional information or documentation submitted to the City as part of this solicitation, and any information or documentation presented to City as part of negotiation of a contract or other agreement may be made publicly available through the City's Internet website.

However, Respondents may designate those portions of the Proposal which contain trade secrets or other proprietary data ("Data") which Respondents desires remain confidential.

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

- A. Mark the cover page as follows: "This Proposal includes trade secrets or other proprietary data."
- B. Mark each sheet or Data to be restricted with the following legend: "Confidential: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this RFP."
- C. Provide a redacted copy of the entire Proposal or submission in .pdf format for posting on the City's website. Respondent is responsible for properly and adequately redacting any Data which Respondent desires remain confidential. If entire pages or sections are removed, they must be represented by a page indicating that the page or section has been redacted. Failure to a redacted copy may result in the posting of an un-redacted copy.

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

All Proposals submitted to the City are subject to the Freedom of Information Act. The City will make the final determination as to whether information, even if marked "confidential," will be disclosed pursuant to a request under the Freedom of Information Act or valid subpoena. Respondent agrees not to pursue any cause of action against the City with regard to disclosure of information.

**V PREPARING PROPOSALS: REQUIRED INFORMATION**



Each Proposal must contain all of the following documents and must conform to the following requirements.

**A**     Format of Proposals

Respondents must structure their Proposal submittal in accordance with the instructions and contents as set out below.

A table of contents or tabs should be utilized to organize the Proposal response in accordance with the submittal requirements set forth below.

**B**     Required Contents of Proposal

Respondents are advised to adhere to the submittal requirements of the RFP. Failure to comply with the instructions of this RFP may be cause for rejection of the non-compliant Proposal. Respondent must provide information in the appropriate areas throughout the RFP. By submitting a response to this RFP, you are acknowledging that if your Proposal is accepted by the City, your Proposal and related submittals may become part of the contract.

At a minimum, the Proposal must include the following items:

**1.     Cover Letter**

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

- (i) Indicate the number of years the company/organization has been in business and provide an overview of the experience and background of the company/organization and its key personnel committed to this project.
- (ii) Identify the legal name of the company/organization, its headquarters address, its principal place of business, its legal form (i.e., corporation, joint venture, limited liability company or partnership, etc.), and the names of its principals or partners and authority to do business in Illinois with the most recent documents filed with and obtained from the Secretary of State.
- (iii) Indicate the name, telephone number(s) and e-mail address of the principal contact for this proposal, oral presentation or negotiations.
- (iv) Summarize Respondent's commitment to comply with the MBE/WBE requirements as stated in the Special Conditions Regarding Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Commitment as stipulated in Exhibit 5 of this RFP.
- (v) Include statement of any objections or comments, to the City's standard contract terms and conditions as stipulated in the Sample Professional Services Agreement in Exhibit 9 of this RFP.
- (vi) Acknowledge receipt of Addendum issued by the City, if any.

**2.     Executive Summary**

Respondent must provide an executive summary which explains its understanding

of the City's intent and objectives and how their Proposal would achieve those objectives. The summary must discuss Respondent's strategy and methodology for successfully implementing and managing the project for the City; capacity to perform, and approach to project management, satisfying the scope of services in the RFP and any additional factors for the City's consideration.

**3. Professional Qualifications and Specialized Experience of Respondent and Team Members Committed to this Project**

If Respondent proposes that major portions of the work will be performed by different team members (e.g. joint venture partners, subcontractors, etc.), Respondent must provide the required information as described below for **each** such team member.

**A. Company Profile Information (See Form in Exhibit 3)**

Identify participants in Respondent's "Team." For example, if Respondent is a business entity that is comprised of more than one legal participant (e.g., Respondent is a general partnership, joint venture, etc.), then Respondent must identify or cause to be identified all participants involved, their respective ownership percentages, and summarize the role, degree of involvement, and experience of each participant separately.

If Respondent has a prime contractor/subcontractor relationship instead, this information regarding role, involvement and experience is also required for any subcontractor that is proposed to provide a significant portion of the work.

Provide a chronological history of all mergers and/or acquisitions involving the Respondent team members, including all present and former subsidiaries or divisions and any material restructuring activities, if applicable. Include any such forthcoming actions, if such disclosure has already been made generally available to the public and is permitted by law.

**If Respondent is a joint venture, attach a copy of the joint venture agreement signed by an authorized officer of each joint venture partner. Each partner must execute:**

- (i) Schedule B as shown in Exhibit 5, if a joint venture includes City certified MBE/WBE firms(s), as applicable.
- (ii) Separate Economic Disclosure Statement and Affidavit ("EDS") completed by each partner and one in the name of the joint venture as shown in Exhibit 6.
- (iii) Insurance certificate in the name of the joint venture business entity.

**B. Company References/Client Profile Information (See Form in Exhibit 4)**

Respondent must provide at least one reference, preferably from a municipality or government agency related to a contract of similar scope and magnitude as described in this RFP. Experience will not be considered unless complete reference data is provided. At a minimum, the following information should be included for each client reference:

- Client name, address, contact person name, telephone and fax number.
- Description of Services provided similar to the Services outlined in Exhibit 1 of this RFP.
- The date when the Service was implemented.
- The location of the project.
- Nature and extent of Respondent's involvement as the prime Contractor (also indicate area of secondary responsibility, if applicable) Identify Services, if any, subcontracted, and to what other company.
- Nature and extent of Respondent's involvement as the prime Contractor (also indicate areas of secondary responsibility, if applicable).
- Contract term (Start and End date, or indicate if currently providing services)
- The total dollar value of the Contract.

All client reference information must be supported and verified. Reference contacts must be aware that they are being used and agreeable to City interview for follow-up.

The City may solicit from previous clients, including the City itself, or any available sources, relevant information concerning Respondent's record of past performance.

**C. Capacity to Perform City Project**

Describe how any uncompleted projects and/or contractual commitments to other clients will affect your ability to deliver services, capacity to perform within City's timeline and affect dedicated resources committed to the City's project. Respondent must provide a summary of current and future projects and commitments and include projected completion dates. Identify what percentage of the Services will be performed utilizing your own workforce, equipment and facilities. What percentage of the work will be subcontracted?

**D. Business License/Authority to do Business in Illinois**

Respondent must provide copies of appropriate licenses or certifications required of any individual or entity performing the Services described in this RFP in the City of Chicago, County of Cook and State of Illinois, for itself,

its partners and its subcontractors, including evidence that Respondent is authorized by the Secretary of State to do business in the State of Illinois. Provide copies with the Proposal submission.

These requirements will vary depending upon the circumstances of each Respondent. See the Department of Business Affairs and Consumer Protection (BACP) website for additional information: [www.cityofchicago.org/businessaffairs](http://www.cityofchicago.org/businessaffairs).

If required by law, Respondents are required to have an Illinois Business License. See the State of Illinois, Department of Business Services website for additional information: (<http://www.cyberdriveillinois.com/>).

Additionally, visit the State of Illinois' Division of Professional Regulation for information regarding the State of Illinois' Professional Certifications: <http://www.idfpr.com/DPR/>.

**4. Professional Qualifications, Specialized Experience and Local Availability of Key Personnel who will be dedicated to the Services described in this RFP.**

Respondent must provide a summary of individuals who will be dedicated to the Services described in this RFP. For each key person identified, Respondent must provide the following information:

- (i) Summary of the key personnel who will be dedicated to the Services as proposed and consistent with Staffing Plan per Section 6.2.5 D2.
- (ii) Key personnel areas of expertise and areas for prime responsibility for various tasks or aspects of the Services.
- (iii) Resumes or corporate personnel profiles with past experience for each of the key personnel, including a description of their roles and responsibilities on recent projects of similar type, scope, and magnitude relating to the Scope of Services as described in this RFP. Respondent must provide the following information:
  - a) Title and reporting responsibility.
  - b) Proposed role in this program, including the functions and tasks for which they will have prime responsibility (also indicate areas of secondary responsibility, if appropriate)
  - c) Pertinent areas of expertise and past experience
  - d) Base location (local facility, as applicable)
  - e) Resumes or corporate personnel profiles which describe their overall experience and expertise.

In addition to resumes, Respondent must provide a detailed description of the roles and responsibilities by job titles (service staff, supervisors, executive managers, etc.). Add any other types of staff/personnel whom the Respondent is proposing.

Respondent must designate a Project Manager responsible for day-to-day oversight of project and implementation schedule. Project Manager must be

available for telephone and e-mail contact during the stated hours of operation and emergency after hour contact with City management.

## **5. Implementation and Management Plan**

Respondent must provide a comprehensive and detailed implementation and management plan which addresses requirements as outlined in Exhibit 1, Scope of Services of this RFP. The plan must demonstrate Respondent's capacity to successfully implement and manage the project and ability to comply with the scope of service and requirements as described in this RFP. The management plan must address, but not be limited to, the following areas:

### **A. Service Delivery**

All responses should, at a minimum, address your plan for delivery of the Services as outlined in Exhibit 1, Scope of Services. The plan should detail how the Services will be administered and your policies and procedures addressing the specific components. Specifically, all responses should address the following areas:

### **B. Approach to Implementing Services**

Describe your policies and procedures for implementing projects, quality control/checks, project management, response time, project support & reporting/recommendation services, including your approach to overcoming obstacles, if any, and troubleshooting to resolve problems.

### **C. Organization Chart**

Submit an organization chart which clearly illustrates the team structure comprising all firms (joint venture partners, if any, subcontractors); their relationship in terms of proposed Services; and key personnel involved and the following information:

- (i) Respondent should provide an organization chart which identifies not only the proposed organizational structure, but also key personnel by name and title. Staffing levels of each organizational unit should be estimated. The specific role of each of the firms/organizations in a team or joint venture for each task/work activity must be described.
- (ii) Respondent must describe the specific role of each of the firms in a team or joint venture for each task/work activity.
- (iii) Respondent should provide an organization chart identifying and showing the relationships between the Respondent and subcontractors. The generic titles and responsibilities of key personnel to be assigned to this project by the Respondent and by any subcontractor must be identified.

### **D. Dedicated Resources**

- (i) Describe facilities, equipment, personnel, transportation vehicles, software/hardware technologies and other resources available for implementing any proposed Services.
- (ii) Staffing Plan:

- a. Provide an assessment of staffing needs for each major activity area by job title and function. Respondent should identify each primary team member working on staff with Respondent, as well as those working in a subcontracting capacity. Provide an assessment of staffing needs for each major activity area by job title and function. The assessment should include full-time equivalents for professional staff and supervisors committed to the City project including team structure, numbers and team management plans to achieve requirements for transition, implementation and services.
- b. Submit resumes for key personnel that will be committed to this engagement. Correlate team members to the tasks they will be performing during implementation/transition and on-going operations. For each proposed key personnel, describe previous related experience and provide references including: name, address, and telephone number of contact person, and brief description of work history. The City reserves the right to conduct background checks on any personnel within the scope of this engagement.

## **6. Itemized Cost Proposal**

The Respondent must provide pricing in the format and content as outlined in Exhibit 2 in order for the Respondent's Proposal to be considered responsive to this section. Proposals that fail to include cost proposal information in Exhibit 2 will be rejected as incomplete and deemed non-responsive.

The Respondent is responsible for disclosing any charges or fees that the City would incur with the Respondent, before, during, and after the implementation as Other Costs.

All costs must, at a minimum, be provided as requested in Exhibit 2. For purposes of comparing costs among Respondents, Respondent must not deviate from the cost table outlined in Exhibit 2. The City reserves the right to negotiate a final fixed price, terms, and conditions with selected Respondent(s).

## **7. Minority and Women Business Enterprises Commitment**

Respondent must complete and submit the forms that are attached to this RFP in Exhibit 5 to evidence Respondent's proposed MBE/WBE participation in some aspect of the contract. For purposes of your response to this RFP, the minimum Minority Business Enterprise (MBE) participation goal is 25% and the minimum Women Business Enterprise (WBE) participation goal is 5% of the total contract value.

Respondent must submit a completed Schedule D-1 and obtain a separate Schedule C-1 completed and signed by each proposed MBE and WBE firm describing the services to be provided. With each Schedule C-1 form, Respondent

should submit a current Letter of Certification issued by the City. The proposed MBE or WBE firm must be certified by the City at the time of Proposal submission. The City reserves the right to require Respondents to replace any proposed MBE/WBE that is not certified with the City.

Further, the percentage participation for each MBE or WBE firm on the individual Schedule C-1s should match the percentages for each MBE or WBE firm listed on the Schedule D-1. All schedules submitted must be original signature. Failure to submit these documents, or incomplete documents, may result in Respondent being declared non-responsive.

In order to determine the best way in which to achieve and document MBE/WBE participation, Respondent must refer to the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment attached to this RFP as Exhibit 5. To locate MBE/WBE firms who are currently certified with the City in various areas of specialty, you can search the City's MBE/WBE Directory Database on the City's website: [www.cityofchicago.org/Procurement](http://www.cityofchicago.org/Procurement).

## **8. Financial Statements**

Respondent must provide a copy of its audited financial statements for the last 3 years. Respondents that are comprised of more than one entity must include financial statements for each entity. The City reserves the right to accept or reject any financial documentation other than the financial statements requested by this section.

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

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

## **9. Economic Disclosure Statement and Affidavit (“EDS”) and Appendix A**

Respondent shall complete an Economic Disclosure Statement and Affidavit and Appendix A. **See Online City EDS Instructions, and Attachment A Online EDS Acknowledgement, in Exhibit 6.** If Respondent is a business entity other than a corporation, then each member, partner, etc., of Respondent must complete an EDS, as applicable, per the instructions on the EDS form. In addition, any entity that has an interest in Respondent or in one or more of its members, partners, etc., and is required pursuant to the Municipal Purchasing Act for Cities of 500,000 or More Population (65 ILCS 5/8-10-8.5) or Chapter 2-154 of the Municipal Code of Chicago to provide a disclosure must submit a completed and executed EDS as an “entity holding an interest in an Applicant” as described in the EDS. All affidavits must be notarized. **Upon completion of Online EDS, Respondent shall submit**

**a copy of 2 documents with their Proposal: 1) Certificate of Filing printed from system and 2) hardcopy of the executed Attachment A, Online EDS Acknowledgement form in lieu of hardcopy EDS forms.**

The Respondent submitting as the prime must submit the above referenced EDS documents with its Proposal. Subcontractors may be asked, at the City's discretion, to provide an EDS during the evaluation process.

## **10. Legal Actions**

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

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

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

## **11. Insurance**

Respondent should include a statement that they can comply with the City's insurance requirements. Prior to contract award, the selected Respondent will be required to submit evidence of insurance in the amounts specified in the attached Exhibit 7.

Respondent, if selected, shall register with the City's online insurance certificate portal using the designated email registration link provided after selection and as specified in Exhibit 8. Respondent shall provide a current and valid email address for both the contractor and the contractor's insurance agent or provider, as described in further detail in Exhibit 8. The Selected Respondent is responsible for ensuring the submission of a certificate of insurance (COI) through the City's online insurance certificate portal prior to award of a contract.

A Respondent selected for contract negotiation and award who fails to fulfill the requirement to register and submit a COI through the City's online insurance



certificate portal may be deemed nonresponsive and the City may choose to instead engage a different Respondent for contract negotiation. If a Respondent is unable to register and submit the COI through the City's online insurance certificate portal and instead submits a printed insurance certificate prior to contract award, the City may accept a paper COI provided that written justification is provided explaining the Respondent's good faith efforts to comply with the terms of this section and the reasons why the submission could not be completed. Instructions for registering and submitting COIs are available at the following URL: <http://www.cityofchicago.org/COI>.

## **VI. EVALUATING PROPOSALS**

### **A. Evaluation Process**

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

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

- Phase I - Preliminary Proposal Assessment
- Phase II - Proposal Evaluation
- Phase III - Site Visits and/or Oral Presentations (if necessary)

#### Phase I - Preliminary Proposal Assessment

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

#### Phase II - Proposal Evaluation

In Phase II, the EC will evaluate the extent to which a Respondent's Proposal meets the service requirements set forth in the RFP. Phase II will include a detailed analysis of the Respondent's qualifications, experience, proposed implementation and management plan, cost proposal and other factors based on the evaluation criteria outlined below.

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

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

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

B. Evaluation Criteria

Phase II will include a preliminary evaluation of: (1) the Respondent's financial stability; (2) the Respondent's compliance with applicable laws, ordinances and statutes; and (3) any information from Respondent that indicates potential conflicts of interest. The EC may, at its discretion, reject from further consideration Proposals that indicate: (1) a Respondent is not financially stable in a way such to ensure performance over the duration of the contract; (2) a Respondent has not complied with applicable laws, ordinances and statutes; or (3) a conflict of interest compromises the Respondent's ability to satisfactorily perform the proposed Services or undermines the integrity of the competitive procurement process.

In Phase II, the Evaluation Committee will review the Respondent's Proposal to determine overall responsiveness and completeness of the Proposal with respect to the components outlined in the RFP using the following criteria (not necessarily listed in order of importance):

- 1) Professional and Technical Competence:
  - a) Ability to provide the Services described in the RFP, including capacity to perform the Scope of Services described in Exhibit 1 of this RFP.
  - b) Professional Qualifications and Specialized Experience of Respondent and its Team on projects of similar scope and magnitude (e.g., specifically with respect to large organizations, and government agencies).
  - c) Professional Qualifications and Specialized Experience of Respondent's Key Personnel (and Team Members) and Local Availability of Key Personnel committed to the City.
  - d) Past and Current Performance of the Respondent (and Team members) on other contracts in terms of quality of services, operating within budget and compliance with performance schedules. The Committee may solicit from current and/or previous clients including the City, other government agencies, or any available sources, relevant information concerning the Respondent's record of performance.
  - e) Quality, Comprehensiveness and Adequacy of the proposed Implementation and Management Plan including ability to meet service levels, capacity to support the project based on staffing plan including supervisory key personnel who will manage and oversee program.
- 2) The Evaluation Committee will review each Proposal for the Respondent's understanding of the objectives of the Services and how these objectives may be best accomplished. Each Respondent will be evaluated on their overall strategy, methodology and approach to meeting the City's service level needs.
- 3) Pricing/Cost Proposal. The City will consider completeness and adequacy of cost as per the Itemized Cost Proposal, Exhibit 2.
- 4) The level, relevancy, and quality of participation by MBE/WBE firms certified by the City. It should be noted that non-responsiveness to this requirement may be cause for the prospective Respondent to be disqualified.

- 5) Actions - The EC will consider any legal actions, if any, against Respondent and any division, subsidiary or parent company of Respondent, or against any member, partner, etc., of Respondent if Respondent is a business entity other than a corporation.
- 6) Financial Stability – The EC will consider the financial condition of Respondent. Respondent must be financially stable to ensure performance over the duration of the contract.
- 7) Compliance with Laws, Ordinances, and Statutes. The EC will consider Respondent's compliance with all laws, ordinances, and statutes governing the contract. See Online City EDS Instructions and Attachment A, Online EDS Acknowledgement form in Exhibit 6.
- 8) Degree to which the Respondent accepts the City's Terms and Conditions in the sample Professional Services Agreement in Exhibit 9 enabling the City to successfully negotiate a contract.
- 9) Conflict of Interest – The EC will consider any information regarding Respondent, including information contained in Respondent's Proposal, that may indicate any conflicts (or potential conflicts) of interest which might compromise Respondent's ability to satisfactorily perform the proposed Services or undermine the integrity of the competitive procurement process. If any Respondent has provided any services for the City in researching, consulting, advising, drafting, or reviewing of this RFP or any services related to this RFP, such Respondent may be disqualified from further consideration.

## **VII. SELECTION PROCESS**

After the EC completes its review of Proposals in Phase II, it may submit to the Commissioner a recommended short list of Respondents (Phase III), or the EC may forgo Phase III and submit a recommendation to select one Respondent, or a recommendation to reject any or all Proposals.

### Phase III- Site Visit and/or Oral Presentations

If the EC submits a short list of Respondents for further review, then, in the sole discretion of the Commissioner, those short-listed Respondents may be subject to a site visit, and/or be invited to appear before the EC for an oral presentation to clarify in more detail information what was submitted in Respondent's Proposal; and/or to ask Respondent to respond to additional questions.

Afterwards, the EC will make a final evaluation of the Respondents and submit its recommendation to the Commissioner.

The City will require the selected Respondent(s) to participate in contract negotiations. The City's requirement that the selected Respondent(s) negotiate is not a commitment by the City to award a contract. If the City determines that it is unable to reach an acceptable contract with the selected Respondent(s), including failure to agree on a fair and reasonable cost proposal for the Services or any other terms or conditions, the Commissioner may terminate negotiations with the selected Respondent(s).

The City reserves the right to terminate this RFP solicitation at any stage if the Commissioner determines this action to be in the City's best interest. The receipt of

Proposals or other documents will in no way obligate the City to enter into any contract of any kind with any party.

## **VIII. ADDITIONAL DETAILS OF THE RFP PROCESS**

### **A. Addenda**

It may be necessary to issue an Addendum to the RFP. See Section I.D of this RFP. Respondents are solely responsible for acquiring the necessary information or materials from the Department.

Any addenda are available via the Internet here:  
<https://www.chicago.gov/city/en/progs/env/RFPs.html>. The City will also notify all entities that register, with a valid e-mail address, for the Pre-Proposal Conference when an Addendum is issued.

An addendum may include, but will not be limited to, the following:

1. Responses to questions and requests for clarification sent to the Department in accordance with Section IV above; or
2. Responses to questions and requests for clarification raised at the Pre-Proposal Conference.

### **B City's Rights to Reject Proposals**

The City, acting through the Commissioner, reserves the right to reject any and all Proposals that do not conform to the requirements set forth in this RFP; or that do not contain at least the information required by this RFP. If no Respondent is selected through this RFP process, then the City may utilize any other procurement method available under the Municipal Purchasing Act and the Municipal Code of Chicago, to obtain the Services described in this RFP or as may otherwise be so required.

### **C. No Liability for Costs**

The City is not responsible for costs or damages incurred by Respondents, member(s), partners, subcontractors, or other interested parties in connection with the RFP process, including but not limited to costs associated with preparing the Proposal and/or participating in any conferences, site visits, demonstrations, oral presentations or negotiations.

### **D Prohibition on Certain Contributions. - Mayoral Executive Order No. 2011-4**

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

this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

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

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

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

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

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

For purposes of this provision:

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

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

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

E. False Statements

(a) 1-21-010 False Statements

Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees.

The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code. (Added Coun. J. 12-15-04, p. 39915, § 1)

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

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

(c) 1-21-030 Enforcement.

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

F. Policy Prohibiting Sexual Harassment (MCC 2-92-612)

For purposes of this section, "Sexual Harassment" is as defined in MCC 6-10-020. For the avoidance of doubt, Contractor will be considered an "Employer" as defined in MCC 6-10-020.

In accordance with MCC 2-92-612, Contractor must attest by affidavit that Contractor has a written policy, compliant with the requirements of MCC 6-10-040, prohibiting Sexual Harassment. The affidavit must be in a form acceptable to the Commissioner. Contractor's affidavit is attached as the Exhibit titled "Sexual Harassment Policy Affidavit."

**EXHIBIT 1**  
**SCOPE OF SERVICES**

## COMMUNITY ENERGY BENCHMARKING PROGRAM MANAGEMENT

### SCOPE OF SERVICES

#### **Task 1: Data Management**

##### **Subtask 1A: Design and Create Benchmarking Database**

Design, create, manage and regularly update a database recording Covered Buildings, associated data, and annual energy use by building type. Database will be owned and proprietary to the City.

##### **Subtask 1B: Collect and Verify Data from Online Data Portal**

Collect data from building owners & managers utilizing an online data portal. At this time, the City utilizes ENERGY STAR™ Portfolio Manager<sup>[1]</sup> to collect data from building owners; however, the City may, in its sole discretion, utilize an alternative online portal.

Develop an automatic data upload from relevant utilities including ComEd and People's Gas. Verify historic and new data received from building owners/managers is accurate. Ensure that data is accurate, consistent, and searchable throughout the database utilizing unique IDs within the database.

##### **Subtask 1C: Data Entry of Building Energy Use Data**

Enter data from online data portal into database developed pursuant to Subtask 1A on an annual basis. Data will be reported by business owners to the Contractor by June 30 of each year for the previous calendar year. Benchmarking data should be entered, collected, and organized by building address within 45 days of receipt of the data. Data from the database will be uploaded to the Chicago Data Portal ([data.cityofchicago.org](https://data.cityofchicago.org)) annually.

#### **Task 2: Outreach and Customer Relationship Management**

##### **Subtask 2A: Manage and Update Covered Buildings List and Contact Information**

Maintain a list of all Covered Buildings. Identify newly constructed buildings that are subject to the Benchmarking Ordinance. New Covered Buildings may be identified including by, but not limited to, using building permit data available from the Chicago Data Portal. Communicate with building owners/managers of new covered buildings to encourage compliance in addition to communications specified in Subtask 2B.

Maintain a contact database for all Covered Buildings. This contact database must include building owners as defined by Exhibit 12 – Benchmarking Rules, in addition to any agents of the owner; and must include name, title, relationship to the building, email address, physical mailing address (for the contact), and phone number. Manage all return mail and emails to ensure timely and proper communications. If it will be difficult for the Contractor to manage return

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1 Energy Star Portfolio Manager website: <https://portfoliomanager.energystar.gov/>.



copies of physical mail locally, include an alternative means of managing returned physical mail in your Proposal.

### **Subtask 2B: Customer Communications**

Develop and implement standard, periodic communications via postal mail and email to ensure Ordinance compliance. Contractor will coordinate with the Department regarding printing and mailing of such postal mailings by City mailing and graphic design staff. These communications will include the following physical and electronic mailings each year to all Covered Buildings:

1. Notice to Comply with Ordinance (Quarter 1)
2. Reminder to Comply (Quarter 2)
3. Notice to Correct (Quarter 3)
4. Chicago Energy Rating System Placard Mailings for Previous Energy Year (Quarter 1).

City may provide additional requirements regarding timing and content for each mailing. Contractor may have to prepare mailings related to 3-year data verification and other communications based on program needs. Records of all communications should be tracked with each property.

Develop and update benchmarking-related resources to publish on the City website.

### **Subtask 2C: Technical Support and Outreach**

Provide at least four quarterly emails each reporting year that provide updates on the benchmarking program, direct building owners to technical resources for compliance on the City website, and connect building owners with other energy-relevant resources, such as the Building Energy Resource Hub, and relevant programs and incentives via local utilities, State of Illinois and the federal government.

Contractor must provide a point of contact, including a phone line, email address, and the ability to virtually meet with interested building owners on a regular basis, that will be available to assist building owners in general inquiries related to reporting requirements, data upload, and other benchmarking questions.

Provide an annual recorded training for building owners providing instructions on Ordinance compliance, data entry into the online portal, and how to utilize building use data to drive energy efficiency in their buildings.

## **Task 3: Reporting**

### **Subtask 3A: Annual Reporting**

Develop a draft annual report using benchmarking data for the calendar year to be approved and issued by the City. The annual report should include an executive summary, compliance rate, detailed tables breaking out data by use and building size, and analysis of trends for the current calendar year, a three-year average, and since program start. Metrics tracked should include, but are not limited to, energy use by fuel type, total energy use, conditioned square footage, energy use intensity, onsite renewables generation, emissions reductions. New metrics

may be developed in cooperation between the Vendor and City on an annual basis. This report shall be submitted to the Department by December 1 of each calendar year.

**Subtask 3B: Annual Update Report of Covered Buildings**

Provide an annual update report to the Department summarizing the number, types, and contact information of new covered buildings subject to the Ordinance in the past calendar year. This report must also include buildings that have not responded to requests or lost contact with the vendor. This report shall be submitted to the Department by January 31 of each calendar year.

## EXHIBIT 2

### SCHEDULE OF COMPENSATION

Respondents shall propose a fixed sum compensation proposal reflective of all anticipated project costs. The cost proposal should be all inclusive and should include all incidental costs such as those associated with successful Contract implementation (e-communications, data management, outreach, etc.).

Using the table below, input any key personnel, their hourly rate, as well as the estimated hours and total costs. For incidental costs, use the columns below, adding in the task, description, and total cost. Below the table, add up all project costs for the “total project cost”. Contractor will not be entitled to compensation beyond their proposed “total project cost” and will be obligated to complete the Scope of Services under this Agreement even if costs incurred by the Contractor over the course of this Agreement exceed the “total project cost.”

The contractor will be required to submit monthly invoices for payment and supporting documentation in a form and content subject at the Commissioner’s discretion. Invoices will be approved and processed with a net 30-day payment window.

The Contractor will be required to report in writing regarding two milestones on an annual basis on the dates specified below. Such reporting will be reviewed by the Commissioner when determining whether the City will exercise its right to extend the Contract beyond the base term. These milestones include:

1. Milestone 1: Occurs when the vendor achieves a 65% response rate, showing substantial progress towards the completion of Tasks 1 and 2. This milestone is expected to occur by July 31 of each year.
2. Milestone 2: Occurs when the final draft of the Annual Benchmarking Report is accepted by the City for publishing and distribution. This milestone is expected to occur by December 31 of each year.

Upon the beginning of the contract agreement, the consultant shall also submit an annual budget update with the Milestone 2 report and submit an annual budget update for City approval. The City and Contractor may revise the budget as needed. As part of their annual budget update, Contractor shall track any increases or deviations from the latest approved budget. Any deviations from the approved budget must be explained and received prior by the City.

<b>Organization Name:</b>			
<b>Key Personnel (Title)</b>	<b>Fully Loaded Hourly Rate</b>	<b>Estimated Hours</b>	<b>Maximum Total Cost</b>
<b>Incidental Costs</b>			
<b>Task</b>	<b>Description</b>		<b>Total Cost</b>

Total Project Costs

**EXHIBIT 3**

**COMPANY PROFILE INFORMATION**

## COMPANY PROFILE INFORMATION

**Submit a completed company profile information sheet for prime, each joint venture partner and subcontractor(s), as applicable.**

- (1) Legal Name of Firm: \_\_\_\_\_
- (2) Doing Business under Other Company Name?  
If yes, Name of Company: \_\_\_\_\_
- (3) Headquarters Address: \_\_\_\_\_
- (4) City, State, Zip Code: \_\_\_\_\_
- (5) Web Site Address: \_\_\_\_\_
- (6) Proposed Role:  Prime  Subcontractor/Subconsultant  Joint Venture Partner  
 Supplier or  Other: \_\_\_\_\_
- (7) Number of Years in Business:  
\_\_\_\_\_
- (8) Total Number of Employees:  
\_\_\_\_\_
- (9) Total Annual Revenues separated by last 3 full fiscal years:  
\_\_\_\_\_
- (10) Major Products and/or Services Offered:  
\_\_\_\_\_  
\_\_\_\_\_
- (11) Other Products and/or Services:  
\_\_\_\_\_  
\_\_\_\_\_
- (12) Briefly describe your firm's strategy for providing energy benchmarking services for clients:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (13) Briefly describe your firm's experience with energy benchmarking services for clients:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT 4

### COMPANY REFERENCES/CLIENT PROFILE INFORMATION

**Submit a completed client profile information sheet for each company reference. Provide a minimum of one reference(s).**

(1) Client Name: \_\_\_\_\_

(2) Address: \_\_\_\_\_

(3) City, State, Zip Code: \_\_\_\_\_

(4) Project Manager: \_\_\_\_\_

(5) Telephone Number: \_\_\_\_\_

(6) E-mail: \_\_\_\_\_

(7) Number of Employees in Client Organization: \_\_\_\_\_

(8) Project Scope of Services/Goals: \_\_\_\_\_

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

(9) Contract Award Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

(10) Initial Contract Amount: \$ \_\_\_\_\_ Final Contract Amount: \$ \_\_\_\_\_

(11) Describe how the client's goals were met. Describe the energy benchmarking services offered and implemented. Attach additional pages, as necessary.

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

(12) Discuss significant obstacles to providing the required services and how those obstacles were overcome:

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

(13) Is the client still utilizing the energy benchmarking services?

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

(14) What was the cost/financing structure of the contract?

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

## EXHIBIT 5

### MBE/WBE SPECIAL CONDITIONS AND SCHEDULES

#### 1. SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT, WOMEN BUSINESS ENTERPRISE COMMITMENT, AND VETERAN BUSINESS ENTERPRISE COMMITMENT FOR COMMODITIES OR SERVICES

##### 1.1. Policy and Terms

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

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all non-construction contracts to certified WBEs.

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

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

MBE Percentage	WBE Percentage	VBE Percentage
25%	5%	0%

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

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

The VBE commitment is met by the Contractor's status as a VBE, or a by a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the VBE participation in such joint venture), or by



subcontracting a portion of the work to one or more VBEs, or by the purchase of materials used in the performance of the contract by one or more VBEs, or by any combination of the foregoing.

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

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

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

## 1.2. Definitions

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

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

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

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

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

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

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

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

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

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

**"Directory"** means the Directory of Certified Firms maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs, WBEs, and VBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE WBE, and VBE firms.

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

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

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

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

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

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

**"Supplier" or "Distributor"** refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

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

**"Women-owned Business Enterprise" or "WBE"** means a firm awarded certification as a small, local women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded

certification as a WBE by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

### **1.3. Joint Ventures**

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

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

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

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

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

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

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

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

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

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

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

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

- a. Only expenditures to firms that perform a Commercially Useful Function as defined above may count toward the Contract Specific Goals.
  - i. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
  - ii. An MBE, WBE, or VBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE, WBE, or VBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs, WBEs, or VBEs do not participate, to determine whether non-MBE, and non-WBE, and non-VBE firms perform the same function in the marketplace to make a determination.
  - iii. Indications that a subcontractor is not performing a commercially useful function include, but are not limited to, labor shifting and equipment sharing or leasing arrangements with the prime contractor or a first-tier subcontractor.

- b. Only the value of the dollars paid to the MBE, WBE, or VBE firm for work that it performs in its Area of Specialty in which it is certified counts toward the Contract Specific Goals, except as provided in MCC 2-92-525(b)(2).
- c. For maintenance, installation, repairs or inspection, or professional services, if the MBE, WBE, or VBE performs the work itself: 100% of the value of work actually performed by the MBE's, WBE's, or VBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies and materials purchased or equipment leased by the MBE, WBE, or VBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces (except supplies and equipment the MBE, WBE, or VBE subcontractor purchases or leases from the prime contractor or its affiliate). 0% of the value of work at the project site that a MBE, WBE, or VBE subcontracts to a non-certified firm counts toward the Contract Specific Goals.
- d. If the MBE, WBE, or VBE is a manufacturer: 100% of expenditures to an MBE, WBE, or VBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- e. If the MBE, WBE, or VBE is a distributor or supplier: 60% of expenditures for materials and supplies purchased from a MBE, WBE, or VBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- f. If the MBE, WBE, or VBE is a broker:
  - i. Zero percent (0%) of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  - ii. As defined above, Brokers provide no commercially useful function.
- g. If the MBE, WBE, or VBE is a member of the joint venture contractor/bidder:
  - i. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE, WBE, or VBE performs with its own forces toward the Contract Specific Goals; or
  - ii. If employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE, WBE, or VBE firm's percentage of participation in the joint venture as described in the Schedule B.
  - iii. A joint venture may also count the dollar value of work subcontracted to other MBEs, WBEs, and VBEs; however, work subcontracted out to non-certified firms may not be counted.
- h. If the MBE, WBE, or VBE subcontracts out any of its work:
  - i. 100% of the value of the work subcontracted to other MBEs, WBEs, or VBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  - ii. 0% of the value of work that an MBE, WBE, or VBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except as allowed by (c) above).
  - iii. The fees or commissions charged for providing a bona fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- iv. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- v. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

#### **1.5. Reductions to or Waiver of MBE, WBE, and VBE Goals**

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

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

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

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

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

#### **Direct Participation**

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

- a. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE/VBE firms to perform any direct work identified or related to the advertised bid/proposal. Documentation must include but is not necessarily limited to:

1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE/VBE firms;
2. A listing of all MBE/WBE/VBE firms contacted that includes:
  - Name, address, telephone number and email of MBE/WBE/VBE firms solicited;
  - Date and time of contact;
  - Method of contact (written, telephone, transmittal of facsimile documents, email, etc.)
3. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE/VBE vendors that includes:
  - Project identification and location;
  - Classification/commodity of work items for which quotations were sought;
  - Date, item and location for acceptance of subcontractor bid proposals;
  - Detailed statement which summarizes direct negotiations with appropriate MBE/WBE/VBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
  - Affirmation that Good Faith Efforts have been demonstrated by:
    - choosing subcontracting opportunities likely to achieve MBE/WBE/VBE goals; and
    - not imposing any limiting conditions which were not mandatory for all subcontractors; and
    - providing notice of subcontracting opportunities to MBE/WBE/VBE firms and assist agencies at least five (5) business days in advance of the initial bid due date; and
    - documented efforts or actual commitment to the Indirect Participation of MBE/WBE/VBE firms.

**OR**

- b. Subcontractor participation will be deemed excessively costly when the MBE/WBE/VBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:
  1. A detailed statement of the work identified for MBE/WBE/VBE participation for which the bidder asserts the MBE/WBE/VBE quote(s) were excessively costly (in excess of 20% higher).
    - A listing of all potential subcontractors contacted for a quotation on that work item;
    - Prices quoted for the subcontract in question by all such potential subcontractors for that work item.

2. Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE/VBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
  - The City's estimate for the work under a specific subcontract;
  - The bidder's own estimate for the work under the subcontract;
  - An average of the bona fide prices quoted for the subcontract;
  - Demonstrated increase in other contract costs as a result of subcontracting to the MBE/WBE/VBE or other firm.

**Assist Agency Participation in waiver/reduction requests**

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

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

**Impracticability**

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

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

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

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

**1.6. Procedure to Determine Bid Compliance**

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

- MBE/WBE and VBE compliance plans demonstrating how the bidder plans to meet the Contract Specific Goals; and/or



- A request for reduction or waiver of the Contract Specific Goals as set forth in Section 6.5 of these Regulations. Please note that bidders must submit Schedule C's and D's demonstrating to what extent bidder is able to meet the Contract Specific Goals even if the bidder submits a request for reduction or waiver of the Contract Specific Goals.

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

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

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

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

The bidder must submit the appropriate Schedule C-1 with the bid for each MBE and WBE included on the Schedule D-1. Suppliers must submit the Schedule C-1 for Suppliers, first tier subcontractors must submit a Schedule C-1 for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C-1 for second tier Subcontractors. Each Schedule C-1 must be executed by each MBE and WBE and accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C-1 has been submitted with the bid, an executed original Schedule C-1 must be submitted by the bidder for each MBE and WBE included on the Schedule D-1 within five business days after the date of the bid opening.

Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

**(2) Letters of Certification.**

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

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

If the bidder's MBE/WBE proposal includes the participation of a MBE/WBE as joint venture on any tier (either as the bidder or as a subcontractor), the bidder must provide a copy of the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3, "Joint Ventures," above. In order to demonstrate the MBE/WBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the

joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

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

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section 1.5 "Reductions to or Waiver of MBE, WBE, and VBE Goals" herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, depends upon requirements agreements and blanket agreements, as percentages of the total estimated usage. All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, as determined by the Chief Procurement Officer in her sole discretion, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

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

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

Any applications for City approval of a Mentor Protégé agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

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

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

The bidder must submit the appropriate Schedule C-V with the bid for each VBE included on the Schedule D-V. Suppliers must submit the Schedule C-V for Suppliers, first tier subcontractors must submit a Schedule C-V for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C-V for second tier Subcontractors. Each Schedule C-1 must be executed by each VBE and accurately detail the work to be performed by the VBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the VBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the VBE in its Area of Specialty. If a facsimile copy of the Schedule C-V has been submitted with the bid, an executed original Schedule C-V must be submitted by the bidder for each VBE included on the Schedule D-1 within five business days after the date of the bid opening.

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

**(2) Letters of Certification.**

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

- (3) **Schedule B: Affidavit of Joint Venture, and Joint Venture Agreements (if applicable).**  
If the bidder's VBE proposal includes the participation of a VBE as joint venture on any tier (either as the bidder or as a subcontractor), the bidder must provide a copy of the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3, "Joint Ventures," above. In order to demonstrate the VBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the VBE; and (3) the commitment of management, supervisory and operative personnel employed by the VBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).
- (4) **Schedule D-V: Required Schedules Regarding VBE Utilization**  
Bidders must submit, together with the bid, a completed Schedule D-V committing them to the utilization of each listed VBE firm. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the VBE commitment in accordance with Section 1.5 "Reductions to or Waiver of MBE, WBE, and VBE Goals" herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each VBE firm included on their Schedule D-V. The total dollar commitment to proposed VBEs must at least equal the VBE goal. Bidders are responsible for calculating the dollar equivalent of the VBE goals as percentages of their total base bids or in the case of Term Agreements, depends upon requirements agreements and blanket agreements, as percentages of the total estimated usage. All commitments made by the bidder's Schedule D-V must conform to those presented in the submitted Schedule C-V. Bidders shall not be permitted to add VBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional VBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any VBE in order to achieve conformity between the Schedules C-V and D-V.
- All commitments for joint venture agreements must be delineated in the Schedule B.

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

- a. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs, WBEs, and VBEs included in their approved MBE/WBE and VBE Utilization Plans. These written agreements will be made available to the Chief Procurement Officer upon request.
- b. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- c. Once the prime Contractor has reported payments made to each subcontractor, including zero dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and

subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

- d. All subcontract agreements between the contractor and MBE/WBE/VBE firms or any first tier non-certified firm and lower tier MBE/WBE/VBE firms must contain language requiring the MBE/WBE/VBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

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

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

#### **1.8. Changes to Compliance Plans**

##### **Permissible Basis for Change Required**

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

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

- a) Unavailability after receipt of reasonable notice to proceed;
- b) Failure of performance;
- c) Financial incapacity;
- d) Refusal by the subcontractor to honor the bid or proposal price or scope;
- e) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- f) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- g) The subcontractor's withdrawal of its bid or proposal; or

- h) De-certification of the subcontractor as an MBE, WBE, or VBE (graduation from the MBE/WBE or VBE program does not constitute de-certification).
- i) Termination of a Mentor Protégé Agreement.

**Procedure for Requesting Approval**

If it becomes necessary to substitute a MBE, WBE, or VBE or otherwise change the Compliance Plan, the procedure will be as follows:

- a) The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute an MBE, WBE, or VBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE, WBE, or VBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
- b) The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.
- c) Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific Goal by substituting a MBE, WBE, or VBE subcontractor. Documentation of a replacement MBE, WBE, or VBE, or of Good Faith Efforts, must meet the requirements in Section 6.5. If the MBE, WBE, or VBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE, non-WBE, or non-VBE.
- d) If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs, WBEs, or VBEs have a fair opportunity to bid on the new scope of work.
- e) A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

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

**1.9. Non-Compliance and Damages**

Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract, at law or in equity: (1) failure to demonstrate Good Faith Efforts, except in the case of a contract where a bid incentive under MCC 2-92-525 was taken into consideration in the award; and (2) disqualification as a MBE, WBE, or VBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE, WBE, or VBE was a factor in the award of the contract and such status was misrepresented by the contractor.

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

Pursuant to MCC 2-92-445, 2-92-740, or 2-92-955, as applicable, remedies or sanctions may include a penalty in the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount

paid to MBEs or WBEs, and disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to MCC 2-92-445 or 2-92-740, within 15 business days of the final determination.

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

#### **1.10. Arbitration**

- a) In the event a contractor has not complied with the contractual MBE/WBE/VBE percentages in its Schedule D-1 and/or D-V, underutilization of MBEs/WBEs/VBEs shall entitle the affected MBE/WBE/VBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. Any disputes between the contractor and such affected MBEs/WBEs/VBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE/VBE in accordance with these Regulations. This provision is intended for the benefit of any MBE/WBE/VBE affected by underutilization and grants such entity specific third-party beneficiary rights. Any rights conferred by these Regulations are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and an MBE/WBE/VBE.
- b) An MBE/WBE/VBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitral process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE/VBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE/VBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
- c) All arbitration fees are to be paid pro rata by the parties, however, that the arbitrator is authorized to award reasonable expenses, including attorney and arbitrator fees, as damages to a prevailing MBE/WBE/VBE.
- d) The MBE/WBE/VBE must send the City a copy of the Demand for Arbitration within ten (10) calendar days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

#### **1.11. Equal Employment Opportunity**

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

**1.12. Attachments and Schedules**

The following attachments and schedules follow:

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

*Note: Attachment A: Assist Agencies may be found on the DPS website.*

**Attachment B - Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE/VBE Goals**

**On Bidder/Proposer's Letterhead – SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY**

RETURN RECEIPT REQUESTED

(Date)

**Specification No.:** {Specification Number}

**Project Description:** {PROJECT DESCRIPTION}

(Assist Agency Name and Address – **SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY**)

Dear \_\_\_\_\_:

\_\_\_\_\_ (Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due \_\_\_\_\_ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

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

Our efforts to identify potential subcontractors have not been successful in order to meet the Minority/Women/Veteran Business Enterprise contract goals. **Due to the inability to identify an appropriate MBE/WBE/VBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted.** If you are aware of such a firm, please contact

\_\_\_\_\_  
Name of Company Representative at Address/Phone

within (10) ten business days of receipt of this letter.

Under the City of Chicago's MBE/WBE and VBE Programs, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within ten (10) working days of your receipt of this letter to:

Jacquelyn Charleston  
Deputy Procurement Officer  
Department of Procurement Services  
City of Chicago  
121 North La Salle Street, Room 806  
Chicago, Illinois 60602

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

Sincerely,



**Schedule B – Affidavit of MBE/WBE/VBE Joint Venture**

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

All information requested on this schedule must be answered in the spaces provided. Do not refer to your joint venture agreement except to expand on answers provided on this form. If additional space is required, attach additional sheets. **In all proposed joint ventures, each MBE, WBE, and/or VBE venturer must submit a copy of its current Letter of Certification.**

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

II. Email address: \_\_\_\_\_  
Name of non-MBE/WBE/VBE venturer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE/VBE compliance: \_\_\_\_\_

III. Name of MBE/WBE/VBE venturer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE/VBE compliance: \_\_\_\_\_

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

V. Attach a copy of the joint venture agreement.

In order to demonstrate the MBE, WBE, and/or VBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest, the proposed joint

venture agreement must include specific details related to: (1) the contributions of capital, personnel and equipment and share of the costs of bonding and insurance; (2) work items to be performed by the MBE/WBE/VBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE/VBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE/VBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.

A. What is the percentage(s) of MBE/WBE/VBE ownership of the joint venture?

MBE/WBE/VBE ownership percentage(s) \_\_\_\_\_

Non-MBE/WBE/VBE ownership percentage(s) \_\_\_\_\_

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

1. Profit and loss sharing: \_\_\_\_\_

2. Capital contributions:

a. Dollar amounts of initial contribution: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

VII. Control of and Participation in the Joint Venture.

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

A. Joint venture check signing:

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

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

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D. Acquisition of lines of credit:

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E. Acquisition and indemnification of payment and performance bonds:

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F. Negotiating and signing labor agreements:

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

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

VIII. Financial Controls of joint venture:

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

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B. Identify the "managing partner," if any, and describe the means and measure of his/her compensation:

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

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

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

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

A. Are any proposed joint venture employees currently employed by either venturer?

Currently employed by non-MBE/WBE/VBE venturer (number) \_\_\_\_\_

Employed by MBE/WBE/VBE venturer \_\_\_\_\_

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:

\_\_\_\_\_

C. Which venturer will be responsible for the preparation of joint venture payrolls:

\_\_\_\_\_

XI. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

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

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

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

_____	_____
Name of MBE/WBE/VBE Partner Firm	Name of Non-MBE/WBE/VBE Partner Firm
_____	_____
Signature of Affiant	Signature of Affiant
_____	_____
Name and Title of Affiant	Name and Title of Affiant
_____	_____
Date	Date

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

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

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

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

\_\_\_\_\_

Signature of Notary Public

My Commission Expires: \_\_\_\_\_(Seal)

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



**FOR  
NON-CONSTRUCTION  
PROJECTS ONLY**

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

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

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

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

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

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

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

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

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

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

**SUB-SUBCONTRACTING LEVELS**

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

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

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

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

One or more owners or principals of the Prime Contractor ( ) does / ( ) does not have an ownership interest in the undersigned. Provide names of such individuals and their respective ownership percentages, or indicate "none." Attach additional sheets if necessary: \_\_\_\_\_

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

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

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

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

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



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



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

**FOR  
NON-CONSTRUCTION  
PROJECTS ONLY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed:<sup>1</sup> \_\_\_\_\_%

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

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

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

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

<sup>1</sup> The Prime Contractor may claim an additional 0.5 percent participation credit (up to a maximum of five (5) percent) for every one (1) percent of the value of the contract performed by the MBE/WBE protégé firm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**5.** Attach Additional Sheets as Needed

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

**NOTE:** This section need not be completed if the MBE/WBE goals have been met through the direct participation outlined in Section I. If the MBE/WBE goals have not been met through direct participation, Contractor is required to demonstrate Good Faith Efforts pursuant to the MBE/WBE Special Conditions in a request for a waiver or reduction of MBE/WBE goals. Indirect participation may be considered as part of such Good Faith Efforts in support of the requested waiver or reduction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**5.** Attach Additional Sheets as Needed

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

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

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

1. MBE Direct Participation

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

2. MBE Indirect Participation

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

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

1. WBE Direct Participation

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

2. WBE Indirect Participation

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

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

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

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

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

One or more owners or principals of the Prime Contractor ( ) does / ( ) does not have an ownership interest in any MBE or WBE listed in this Schedule D. Provide names of such individuals and their respective ownership percentages, and identify the MBE/WBE firms in which such ownership is held, or indicate "none." Add additional sheets if necessary:

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

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

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

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

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

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

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

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

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

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

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

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

SEAL:

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

## SCHEDULE C-V

### VBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant

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

From: \_\_\_\_\_  
(Name of VBE Firm)

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

The VBE status of the undersigned is confirmed by the attached City of Chicago Certification Letter. 100% VBE participation is credited for the use of a VBE “manufacturer.” 60% participation is credited for the use of a VBE “regular dealer.”

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

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

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

#### **SUB-SUBCONTRACTING LEVELS**

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

\_\_\_\_\_ % of the dollar value of the VBE subcontract that will be subcontracted to non VBE contractors.

\_\_\_\_\_ % of the dollar value of the VBE subcontract that will be subcontracted VBE contractors.

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

One or more owners or principals of the Prime Contractor ( ) does / ( ) does not have an ownership interest in the undersigned. Provide names of such individuals and their respective ownership percentages, or indicate “none.” Attach additional sheets if necessary: \_\_\_\_\_

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

\_\_\_\_\_  
(Signature of President/Owner/CEO or Authorized Agent of VBE)

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

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

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

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

## **SCHEDULE D-V**

### Compliance Plan Regarding VBE Utilization

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

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

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

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

All VBE firms included in this plan have been certified as such by the City of Chicago (Letters of Certification Attached).

#### **I Direct Participation of VBE Firms:**

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

- A. If bidder/proposer is a joint venture and one or more joint venture partners are certified VBEs, attach copies of Letters of Certification, Schedule B form and a copy of Joint Venture Agreement clearly describing the role of each VBE firm(s) and its ownership interest in the joint venture.
- B. Complete this section for each VBE Subcontractor/Supplier/Consultant participating on this contract:

1. Name of VBE: \_\_\_\_\_

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

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

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

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

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

2. Name of VBE: \_\_\_\_\_

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

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

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

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

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

3. Name of VBE: \_\_\_\_\_

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

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

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

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

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

4. Name of VBE: \_\_\_\_\_

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

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

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

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

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

Add additional sheets if necessary

## II. Indirect Participation of VBE Firms

**NOTE:** This section need not be completed if the VBE goals have been met through the direct participation outlined in Section I. If the VBE goals have not been met through direct participation, Contractor is required to demonstrate Good Faith Efforts pursuant to the VBE Special Conditions in a request for a waiver or reduction of VBE goals. Indirect participation may be considered as part of such Good Faith Efforts in support of the requested waiver or reduction.

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

1. Name of VBE: \_\_\_\_\_

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

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

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

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

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

2. Name of VBE: \_\_\_\_\_

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

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

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



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

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

3. Name of VBE: \_\_\_\_\_

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

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

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

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

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

4. Name of VBE: \_\_\_\_\_

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

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

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

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

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

Add additional sheets if necessary

**II. Summary of VBE Proposal**

**A. VBE Proposal**

1. VBE Direct Participation

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

2. VBE Indirect Participation

<b>VBE Firm Name</b>	<b>Dollar Amount Participation (\$)</b>	<b>Percent Amount Participation (%)</b>

<b>Total Indirect Participation</b>		

The Prime Contractor designates the following person as its VBE Liaison Officer:

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

One or more owners or principals of the Prime Contractor ( ) does / ( ) does not have an ownership interest in any VBE listed in this Schedule D.

Provide names of such individuals and their respective ownership percentages, and identify the VBE firms in which such ownership is held, or indicate "none." Add additional sheets if necessary: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

SEAL:

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

**EXHIBIT 6**

**ONLINE CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT (EDS) AND APPENDIX A  
INSTRUCTIONS**

**AND**

**ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT**

## EXHIBIT 6

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

WHEN SUBMITTING YOUR RESPONSE TO THIS REQUEST FOR PROPOSAL (RFP), FOR COMMUNITY ENERGY BENCHMARKING PROJECT MANAGEMENT, DOE NO. 01-2025, THE RESPONDENT(S) SHALL SUBMIT 2 DOCUMENTS: 1) A “**CERTIFICATE OF FILING**” EVIDENCING COMPLETION OF YOUR ONLINE EDS AND 2) AN EXECUTED **ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT** SIGNED BY AN AUTHORIZED OFFICER BEFORE A NOTARY.

#### 1. ONLINE EDS FILING

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

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

**NOTE: ALWAYS SELECT THE “CONTRACT” (NOT UPDATE) BOX WHEN COMPLETING AN ONLINE EDS TO ENSURE A NEW CONTRACT SPECIFIC ONLINE EDS IS CREATED RELATED TO THE SOLICITATION DOCUMENT. CLICKING THE UPDATE BOX ONLY UPDATES PREVIOUS EDS INFORMATION.**

##### 1.2. ONLINE EDS WEB LINK

The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

##### 1.3. ONLINE EDS NUMBER

Upon completion of the online EDS submission process, the Respondent will be provided an EDS number. Respondent should record this number here:

EDS Number: \_\_\_\_\_

##### 1.4. ONLINE EDS CERTIFICATION OF FILING AND ATTACHMENT A, ONLINE EDS ACKNOWLEDGEMENT

Upon completion of the online submission process, the Respondent will be able to print a hard copy Certificate of Filing. The Respondent should submit the signed Certificate of Filing and Attachment A, Online EDS Acknowledgement form with its response. Please insert your Certification of Filing and Attachment A, Online EDS Acknowledgement form following the Cover Letter. See Section B, Required Contents of Proposal in the RFP. A Respondent who does not include a signed Certificate of Filing and/or Attachment A, Online EDS Acknowledgement form with its response must provide it upon the request of the Commissioner.

##### 1.5. PREPARATION CHECKLIST FOR REGISTRATION

To expedite and ease your registration process, we recommend that you collect the following information prior to registering for an Online EDS user account:

	1. Invitation number, if you were provided an invitation number.
	2. EDS document from previous years, if available.
	3. Email address to correspond with the Online EDS system.
	4. Company Information:
	a. Legal Name
	b. FEIN/SSN
	c. City of Chicago Vendor Number, if available.
	d. Address and phone number information that you would like to appear on your EDS documents.
	e. EDS Captain. Check for an EDS Captain in your company - this maybe the person that usually submits EDS for your company, or the first person that registers for your company.

**1.6. PREPARATION CHECKLIST FOR EDS SUBMISSION**

To expedite and ease your EDS submission, we recommend that you collect the following information prior to updating your EDS information online.

Items #1 through #7 are needed for both EDS information updates and contract related EDS documents:

- \_\_\_\_\_ 1. Invitation number, if you were provided with an invitation number.
- \_\_\_\_\_ 2. Site address that is specific to this EDS.
- \_\_\_\_\_ 3. Contact that is responsible for this EDS.
- \_\_\_\_\_ 4. EDS document from previous years, if available.
- \_\_\_\_\_ 5. Ownership structure, and if applicable, owners' company information:
  - \_\_\_\_\_ a. % of ownership
  - \_\_\_\_\_ b. Legal Name
  - \_\_\_\_\_ c. FEIN/SSN
  - \_\_\_\_\_ d. City of Chicago Vendor Number, if available.
  - \_\_\_\_\_ e. Address
- \_\_\_\_\_ 6. List of Commissioners, officers, titleholders, etc. (if applicable).
- \_\_\_\_\_ 7. For partnerships/LLC/LLP/Joint ventures, etc.:
  - \_\_\_\_\_ a. List of controlling parties (if applicable).

Items #8 and #9 are needed ONLY for contract related EDS documents:

- \_\_\_\_\_ 8. Contract related information (if applicable):
  - \_\_\_\_\_ a. City of Chicago contract package
  - \_\_\_\_\_ b. Cover page of City of Chicago bid/solicitation package
  - \_\_\_\_\_ c. If EDS is related to a mod, then cover page of your current contract with the City.
- \_\_\_\_\_ 9. List of subcontractors and retained parties:
  - \_\_\_\_\_ a. Name
  - \_\_\_\_\_ b. Address
  - \_\_\_\_\_ c. Fees – Estimated or paid

## 1.7. EDS FREQUENTLY ASKED QUESTIONS

### **Q: Where do I file?**

A: The web link for the Online EDS is <https://webapps.cityofchicago.org/EDSWeb>

### **Q: How do I get help?**

A: If there is a question mark on a page or next to a field, click on the question mark for help filling out the page or field. You may also consult the User Manual and the Training Videos available on the left menu.

### **Q: Why do I have to submit an EDS?**

A: The Economic Disclosure Statement (EDS) is required of applicants making an application to the City for action requiring City Council, City department or other City agency approval. For example, all bidders seeking a City contract are required to submit an EDS. Through the EDS, applicants make disclosures required by State law and City ordinances and certify compliance with various laws and ordinances. An EDS is also required of certain parties related to the applicant, such as owners and controlling parties.

### **Q: Who is the Applicant?**

A: "Applicant" means any entity or person making an application to the City for action requiring City Council or other City agency approval. The applicant does not include owners and parent companies.

### **Q: Who is the Disclosing Party?**

A: "Disclosing Party" means any entity or person submitting an EDS. This includes owners and parent companies.

### **Q: What is an entity or legal entity?**

A: "Entity" or "Legal Entity" means a legal entity (for example, a corporation, partnership, joint venture, limited liability company or trust).

**Q: What is a person for purposes of the EDS?**

A: "Person" means a human being.

**Q: Who must submit an EDS?**

A. An EDS must be submitted in any of the following three circumstances:

<b>Applicants:</b>	An Applicant must always file this EDS. If the Applicant is a legal entity, state the full name of that legal entity. If the Applicant is a person acting on his/her own behalf, state his/her name.
<b>Entities holding an interest:</b>	Whenever a legal entity has a beneficial interest (E. G. direct or indirect ownership) of more than 7.5% in the Applicant, each such legal entity must file an EDS on its own behalf.
<b>Controlling entities:</b>	Whenever a Disclosing Party is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture that has a general partner, managing member, manager or other entity that can control the day-to-day management of the Disclosing Party, that entity must also file an EDS on its own behalf. Each entity with a beneficial interest of more than 7.5% in the controlling entity must also file an EDS on its own behalf.

**Q: What information is needed to submit an EDS?**

A: The information contained in the Preparation Checklist for EDS submission.

**Q: I don't have a user ID & password. Can I still submit an Online EDS?**

A: No. You must register and create a user ID and password before submitting an Online EDS.

**Q: What information is needed to request a user ID & password for Online EDS?**

A: The information contained in the Preparation Checklist for Registration is needed to request a login for the Online EDS.

**Q: I already have a username and password from another City web site (City Web Portal, Department of Construction and Permits, Department of Consumer Services, etc.). Can I log-in the Online EDS with that account?**

A: Usually not. The Online EDS uses a user ID and password system that is shared by the Public Vehicle Advertising and Water Payment web sites. You may use a username and password from those sites by answering "Yes" to "Is this an existing City of Chicago user ID?" when registering. Other usernames and passwords will not be automatically recognized. However, you may choose to create an identical username for the Online EDS if it is not already taken.

**Q: I don't have an email address. How do I submit an Online EDS?**

A: You cannot get an account to submit an online EDS without an email address. If you need an e-mail address, we suggest that you use a free internet email provider such as [www.hotmail.com](http://www.hotmail.com) or [www.yahoo.com](http://www.yahoo.com) or [mail.google.com](http://mail.google.com) to open an account. The City does not endorse any particular free internet email provider. Public computers are available at all Chicago Public Library branches.

**Q: I forgot my user ID. Can I register again?**

A: No. If you are the EDS Captain of your organization, please contact the Department of Procurement Services at 312-744-4900. If you are an EDS team member, contact your EDS Captain, who can look up your user ID.

**Q: Who is the EDS Captain?**

A: The EDS Captain is a person who performs certain administrative functions for an organization which files an EDS. Each organization registered with the Online EDS has at least one EDS Captain. There may be co-captains, who are all equal. EDS Captains approve new users, change contact information for an organization, and de-active accounts of employees who have left the organization. Please see the User Manual for more information.

**Q: Why do we need EDS Captains?**

A: The Online EDS is designed to be a self-service web application which allows those doing or seeking to do business with the City to perform as many routine functions as possible without City intervention. Because many organizations have multiple staff filing an EDS, the EDS Captain role allows those organizations to self-manage the contact information and users.

**Q: Who is the EDS team?**

A: The EDS team for an organization is everyone who is registered to file an EDS on behalf of the organization.

**Q: I forgot my password. What should I do?**

A: To retrieve a temporary password, click the “Forgot your password?” link on the login page. Enter your user ID that you provided when you registered your account. The system will automatically generate a temporary password and send it to you. When you log-in with your temporary password, you will be asked to create a new password.

**Q: How do I complete an Online EDS?**

A: Click on “Create New” after logging in. The Online EDS system will walk you through the EDS questions. Please see the User Manual for details.

**Q: How do I fill out a Disclosure of Retained Parties?**

A: There is no longer a separate Disclosure of Retained Parties filing. After logging in, click on “Create New”. Answer (click) “Contract” to “Is this EDS for a contract or an EDS information update?” Click “Fill out EDS”, and click on the “Retained Parties” tab. When finished, click on “Ready to Submit.”

**Q: How do I attach documents?**

A: Attachments are discouraged. If at all possible, please provide a concise explanation in the space provided in the online form. Attachments with pages of officers are not acceptable. Names of officers must be typed into the system. If you must provide an attachment for another reason, please send it



to your City of Chicago contact (contract administrator or negotiator for procurements) and they will attach it for you. Documents can be sent in PDF (preferred), Word, or paper format.

**Q: Who can complete an Economic Disclosure Statement online?**

A: Any authorized representative of your business with a user ID and password can complete your EDS online. One person, such as an assistant, can fill in the information and save it, and another person can review and electronically sign the Online EDS.

**Q: What are the benefits of filing my Economic Disclosure statement electronically?**

A: Filing electronically reduces the chance of filing an incomplete EDS and speeds up the processing of contract awards. A certificate of filing can be printed at the completion of the process and inserted into your bid package. The biggest benefit for those who frequently do business with the City is that after the first EDS, each EDS is much easier to fill out because non-contract specific information is pre-filled from the last submitted EDS.

**Q: Will my information be secure?**

A: Yes. When making your internet connection to our Web Server, you will connect through a Secure Socket Layer (SSL for short) to the "Online EDS" login page. All information you type will be protected using strong encryption. Within the login page, you will provide us with a user ID, password, and secret question for user authentication, Only you will have knowledge of this unique identification information.

**Q: I am filing electronically. How do I sign my EDS?**

A: Once you have completed the EDS, you will be prompted to enter your password and answer to your secret question. Together, these will serve as your electronic signature. Although you will also print and physically sign an EDS certification of filing as a notice that your EDS was filed, your EDS is complete as a legal document with only the electronic filing.

**Q: My address has changed. How can I update my information?**

A: You must be an EDS Captain for your organization to update this. Log-in and click on "Vendor Admin, Site Administration." Select the appropriate site and click edit.

**Q: I have more questions. How can I contact the Department of Environment?**

A: Please contact the contract administrator or negotiator assigned to your solicitation or contract. You may email [environmentRFP@cityofchicago.org](mailto:environmentRFP@cityofchicago.org) or you may call DOE at 312-742-0742 between 8:30 AM and 5:00 PM Central Time.

**Q: Can I save a partially complete EDS?**

A: Yes. Click "Save". To avoid data loss, we recommend you save your work periodically while filling out your EDS.

**Q: Do I have to re-type my information each time I submit an EDS?**

A: No. The system will remember non-contract specific information from your last submitted EDS for one year. This information will be filled-in for you in your new EDS. You will have an opportunity to correct it if it has changed since your last filing. When you submit your new EDS, the information is saved and the one-year clock begins running anew.

**Q: What are the system requirements to use the Online EDS?**

A: The following are minimum requirements to use the Online EDS:

- A PDF viewer such as Adobe Reader is installed and your web browser is configured to display PDFs automatically. You may download and install Adobe Reader free at [www.adobe.com/products/reader/](http://www.adobe.com/products/reader/)
- Your web browser is set to permit running of JavaScript.
- Your web browser allows cookies to be set for this site. Please note that while we use cookies in the Online EDS, we do not use them to track personally identifiable information, so your privacy is maintained.
- Your monitor resolution is set to a minimum of 1024 x 768.
- While not required to submit an EDS, if you wish to view the training videos, you must have Adobe Flash Plugin version 9 or higher, speakers, and sound. Please note that very old computers may not be able to run Adobe Flash and will not be able to play the training videos. In that case, we encourage you to seek help using the Online EDS Manuals. You may download and install Adobe Flash Plugin free at <http://get.adobe.com/flashplayer>

The Online EDS has been tested on Internet Explorer 6.0 and 7.0 and Firefox 2.0 and 3.0 on Windows XP and Mac OS X. Although it should work on other browsers and operating systems, the City of Chicago cannot guarantee compatibility.

**ATTACHMENT A**

**ONLINE EDS ACKNOWLEDGEMENT**

The undersigned, hereby acknowledges having received the RFP for Community Energy Benchmarking Project Management, DOE Project No. 01-2025 containing a full set of RFP Documents and affirms that the Respondent shall be bound by all the terms and conditions contained in the RFP Documents, regardless of whether a complete set thereof is attached to this response.

Under penalty of perjury, the undersigned: (1) warrants that he/she was authorized to submit an EDS on behalf of the Disclosing Party on-line, (2) warrants that all certifications and statements contained in the EDS are true, accurate and complete as of the date the EDS was submitted on-line, and (3) further warrants that, as of the date of submission of this response, there have been no changes in circumstances since the date that the EDS was submitted that would render any certification in the EDS false, inaccurate or incomplete.

Further, the undersigned being duly sworn deposes and says on oath that no disclosures of ownership interests have been withheld and the information provided therein to the best of its knowledge is current and the undersigned has not entered into any agreement with any other respondent or prospective respondent or with any other person, firm or corporation relating to the price named in this proposal or any other proposal, nor any agreement or arrangement under which any act or omission in restraining of free competition among respondents and has not disclosed to any person, firm or corporation the terms of this proposal or the price named herein.

COMPANY NAME: \_\_\_\_\_  
(Print or Type)

AUTHORIZED OFFICER SIGNATURE: \_\_\_\_\_

TITLE OF SIGNATORY: \_\_\_\_\_  
(Print or Type)

BUSINESS ADDRESS: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_ (Affix Corporate Seal)

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

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as President (or other authorized officer) and \_\_\_\_\_ as Secretary of \_\_\_\_\_ (Company Name)

Notary Public Signature: \_\_\_\_\_ (Seal)

**EXHIBIT 7**

**CONTRACT INSURANCE REQUIREMENTS AND INSURANCE CERTIFICATE**

## DEPT OF ENVIRONMENT

### DOE-072-Energy Benchmarking Program Management

Contractor must provide and maintain at Contractor's own expense, during the term of the Agreement and during the time period following expiration if Contractor is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

#### **A. INSURANCE REQUIRED FROM CONTRACTOR**

##### **1) Workers' Compensation and Employer's Liability**

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employer's Liability coverage with limits of not less than **\$1,000,000** each accident; **\$1,000,000** disease-policy limit and **\$1,000,000** disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

The Contractor may use a combination of primary and Excess/Umbrella policy/policies to satisfy the limits of liability required herein. The Excess/Umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

##### **2) Commercial General Liability**

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate for bodily injury, personal injury, and property damage liability. Coverages must include but not be limited to, the following: all premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, contractual liability (not to include endorsement CG 21 39 or equivalent), no exclusion for damage to work performed by Subcontractors, any limitation of coverage for designated premises or project is not permitted (not to include endorsement CG 21 44 or equivalent) and any endorsement modifying or deleting the exception to the Employer's Liability exclusion is not permitted. Where the general aggregate limit applies, the general aggregate must apply per project/location and once per policy period if applicable, or Contractor may obtain separate insurance to provide the required limits which will not be subject to depletion because of claims arising out of any other work or activity of Contractor. If a general aggregate applies to products/completed operations, the general aggregate limits must apply per project and once per policy period.

The City must be provided additional insured status with respect to liability arising out of Contractor's work, services or operations and completed operations performed on behalf of the City. Such additional insured coverage must be provided on ISO form CG 2010 10 01 and CG 2037 10 01 or on an endorsement form at least as broad for ongoing operations and completed operations. The City's additional insured status must apply to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. A copy of the physical

'Additional Insured' endorsement must accompany the Certificate of Insurance when submitted. Contractor's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

The Contractor may use a combination of primary and Excess/Umbrella policy/policies to satisfy the limits of liability required herein. The Excess/Umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

### 3) **Automobile Liability**

A Business Auto Policy covering any motor vehicles (owned, non-owned and hired) which are used in connection with work, services, or operations to be performed, must be maintained by the Contractor. Limits of not less than **\$1,000,000** per accident for bodily injury and property damage and covering the ownership, maintenance, or use of any auto whether owned, leased, non-owned or hired used in the performance of the work or services. The City is to be added as an additional insured on a primary, non-contributory basis. A copy of the physical 'Additional Insured' endorsement must accompany the Certificate of Insurance when submitted.

The Contractor may use a combination of primary and Excess/Umbrella policy/policies to satisfy the limits of liability required herein. The Excess/Umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

### 4) **Umbrella or Excess**

Umbrella or Excess Liability Insurance must be maintained with limits of not less than **\$5,000,000** per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the Excess or Umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without the right of contribution by any other insurance or self-insurance maintained by or available to the City.

The Contractor may use a combination of primary and Excess/Umbrella policies to satisfy the limits of liability required under Workers' Compensation, Employer's Liability, Commercial General Liability, and Automobile Liability.

### 5) **Professional Liability**

Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than **\$5,000,000** per claim. Coverage must include, but not be limited to, technology errors and omissions and pollution liability if environmental site assessments are conducted, when applicable. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work under the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

### 6) **Cyber Liability and Tech E & O Insurance**

Cyber Liability must be maintained with limits of not less than **\$5,000,000** for cyber incident and coverage must include the following:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of City of Chicago data, whether by Vendor or any subcontractor or cloud service provider used by Vendor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees, assessments, and penalties where insurable by law;
- Liability for technological products and services provided by or created by Vendor, including intellectual property infringement or misappropriation.
- Liability for professional services provided by Vendor;
- PCI fines, fees, penalties, and assessments;
- Cyber extortion payment and response costs;
- First and Third-Party Business Interruption Loss resulting from a network security failure or system failure;
- Costs of restoring, updating, or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

The City must be named as an additional insured. A copy of the physical 'Additional Insured' endorsement must accompany the Certificate of Insurance when submitted. Certificates of Insurance and Additional Insured Endorsements reflecting applicable limits, sub-limits, self-insured retentions and deductibles must be provided upon request. The certificate must confirm the required coverages in the 'Additional Comments' section or Contractor must provide a copy of the declarations page confirming the details of the cyber insurance policy. Contractor will be responsible for all deductibles, self-insured retentions or waiting period requirements. Contractor shall provide any coverage sublimits under the policy. In the event Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Chicago shall be entitled to the broader coverage and/or higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available. If the Cyber Liability and Tech E&O policy is written on a claims-made basis, the retroactive date should be prior to the commencement of this agreement/addendum. If the policy is written on a claims-made basis and non-renewed at any time during and up until the completion of the project or services, Contractor shall maintain coverage that meets these requirements for a period of not less than three years from the date of completion of the project or services with a retroactive date prior to the commencement of the project or services or shall purchase an Extended Reporting Period for at least a three year period. All insurance carrier(s) must carry an A.M. Best rating of at least A-, Class VIII.

*Insurance coverages that begin with “when,” “if,” or “where,” are considered conditional, and it is the Contractor’s responsibility to obtain the applicable coverage when performing such work, service, or operation as described in the conditional coverage paragraph(s). If it is determined that conditional coverage is not initially applicable, it is the Contractor’s continuing responsibility to update the insurance coverage as needed. If at any time, the Contractor or City determines that a conditional coverage is applicable, the Contractor shall not perform the work, service, or operation in connection with the contract until evidence of all applicable insurance coverage is provided to the City.*

## 7) Valuable Papers (when applicable)

When any plans, designs, drawings, specifications, media, data, records, reports, and other documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever and must have limits sufficient to pay for the re-creation and reconstruction of such records.

**8) Blanket Crime (when applicable)**

When applicable, Contractor must maintain Crime Insurance or equivalent covering all persons handling funds under this Agreement, against loss by employee dishonesty, forgery or alteration, funds transfer fraud, robbery, theft, destruction or disappearance, computer fraud, credit card forgery, and other related crime risks. The policy limit shall be written to cover losses in the amount of the maximum monies collected or received and in the possession of Contractor at any given time under this Agreement.

**9) Property (when applicable)**

Contractor is responsible for all loss or damage to City property at full replacement cost as a result of the Agreement.

Contractor is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by Contractor.

**B. Additional Requirements**

Evidence of Insurance. Contractor must furnish the City of Chicago, Certificates of Insurance (COI) and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal COIs and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Contractor must submit evidence of insurance prior to execution of Agreement. The receipt of any COI does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the COI are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Contractor, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the required insurance provisions. Contractor must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect the Contractor for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Contractor to comply with required coverage and terms and conditions outlined herein will not limit Contractor's liability or responsibility nor does it relieve Contractor of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.



Notice of Material Change, Cancellation or Non-Renewal. Consistent with State law, Contractor must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium. See 215 ILCS 5/143.16 and 143.17(a). A copy of the physical endorsements must accompany the Certificate of Insurance for General Liability, Automobile Liability and Workers Compensation in order to comply with the insurance requirements.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

Waiver of Subrogation. Contractor hereby waives its rights and its insurer(s)' rights of, and agrees to require their insurers to waive their rights of, subrogation against the City under all required insurance herein for any loss arising from or relating to this Agreement. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City receives a waiver of subrogation endorsement for Contractor's insurer(s).

Contractors Insurance Primary. All insurance required of Contractor under this Agreement shall be endorsed to state that Contractor's insurance policy is primary and not contributory with any insurance carrier by the City.

Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A-, Class VIII, unless otherwise approved by the City.

No Limitation as to Contractor's Liabilities. The coverages and limits furnished by the Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by the City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Contractor under this Agreement.

Insurance not Limited by Indemnification. 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.

Insurance and Limits Maintained. If Contractor maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and shall be entitled the higher limits and/or broader coverage maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Joint Venture or Limited Liability Company. If Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Contractor. If Contractor desires additional coverages, the Contractor will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Contractor shall name the Subcontractor(s) as a named insured(s) under Contractor's insurance or Contractor will require each Subcontractor(s) to

provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation, Employers Liability and Professional Liability Insurance, and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Contractor. Contractor shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. The Contractor is responsible for ensuring that each Subcontractor has named the City of Chicago as an additional insured where required, as well as specifically naming the City of Chicago as an additional insured on any endorsement form at least as broad and acceptable to the City. The Contractor is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, the Contractor must provide to the City Certificates of Insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Contractor's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Division maintains the right to modify, delete, alter or change these requirement.

# INSURANCE CERTIFICATE OF COVERAGE

Name Insured:		Specification #:	<b>DOE No. 01-2025</b>
Address (Street):		RFP:	
(City/State/Zip)		Project #:	
		Contract #:	
Description of Operation/Location:			

The insurance policies and endorsements indicated below have been issued to the designated named insured with the policy limits as set forth herein covering the operation described within the contract involving the named insured and the City of Chicago. The Certificate issuer agrees that in the event of cancellation, non-renewal or material change involving the indicated policies, the issuer will provide at least sixty (60) days prior written notice of such change to the City of Chicago at the address shown on this Certificate. This certificate is issued to the City of Chicago in consideration of the contract entered into with the named insured, and it is mutually understood that the City of Chicago relies on this certificate as a basis for continuing such agreement with the named insured:

Type of Insurance	Insurer Name	Policy Number	Expiration Date	Limits of Liability All Limits in Thousands
<b>General Liability</b>				
Claims made [ ] Occurrence				
Premise-Operations				
Explosion/Collapse Underground				CSL Per Occurrence \$
Products/Completed-Operations				
Blanket Contractual				
Broad Form Property Damage				General Aggregate \$
Independent Contractors				
Personal Injury				
Pollution				Products/Completed Operations Aggregate \$
<b>Automobile Liability</b>				CSL Per Occurrence \$
Excess Liability				Each Occurrence
Umbrella Liability				\$
<b>Worker's Compensation and Employer's Liability</b>				Statutory/Illinois Employers Liability \$
<b>Builders Risk/Course of Construction</b>				Amount of Contract
Professional Liability				\$
Owner Contractors Protective				\$
Other				\$

- |    |  |
|----|--|
| a. | Each Insurance policy required by this agreement, excepting policies for worker's compensation and professional liability, will read:<br>"The City of Chicago is an additional insured as respects operations and activities of, or on behalf of the named insured, performed under contract with or permit from the City of Chicago." |
| b. | The General, Automobile and Excess/Umbrella Liability Policies described provide for severability of Interest (cross liability) applicable to the named insured and the City.  |
| c. | Workers Compensation and Property Insurers shall waive all rights of subrogation against the City of Chicago.  |
| d. | The receipt of this certificate by the City does not constitute agreement by the City that the insurance requirements in the contract have been fully met, or that the insurance policies indicated by this certificate are in compliance with all contract requirements.  |

<b>Name and Address of Certificate Holder and Recipient of Notice</b>	
Certificate Holder/Additional Insured	Signature of Authorized Rep _____
City of Chicago	Agency/Company: _____
Procurement Department	Address _____
121 N. LaSalle St., #403	Telephone _____
Chicago, IL 60602	

**For City use only**

Name of City Department requesting certificate: (Using Dept.) _____			
Address: _____	ZIP Code: _____	Attention: _____	

## EXHIBIT 8

### REGISTRATION AND SUBMITTAL OF CERTIFICATE OF INSURANCE THROUGH MYCOI

\*\* Exhibit 8 only pertains to selected consultants. It provides instructions on registering and submitting a certificate of insurance.

You will receive a registration e-mail from [registration@myCOItracking.com](mailto:registration@myCOItracking.com). Please follow the instructions in the e-mail to complete your registration with myCOI. Outlined within this exhibit are step by step instructions on how to register.

Contractor's organizational contact for this contract and insurance related matters as well as your insurance agent's contact information will be needed for registration.

You do not need to provide a certificate of insurance during your registration; myCOI will work with your agent using the information provided during registration to obtain the certificate of insurance directly from your agent.

Once the certificate of insurance is submitted by your agent and is approved for compliance by myCOI notification will be provided.

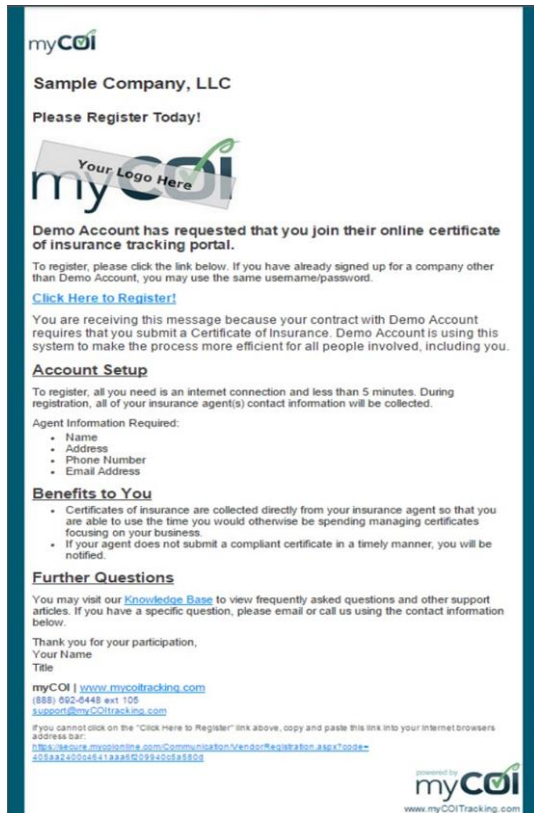
Please add the following e-mail addresses to your safe sender list to ensure you receive all e-mail communication from myCOI: [registration@myCOItracking.com](mailto:registration@myCOItracking.com), [certificaterequest@myCOIsolution.com](mailto:certificaterequest@myCOIsolution.com)

If you have any questions, please contact myCOI directly at 317-759-9426, Ext. 105 or via e-mail at [support@myCOItracking.com](mailto:support@myCOItracking.com).

## The Vendor Registration Process:

myCOI's vendor registration takes approximately five minutes to complete. You, as the vendor, will set-up your sign-in information and provide some basic contact information for your insurance agent.

From here, you will not be contacted by myCOI unless your insurance agent is not responsive to our requests. This five minute registration process is intended to replace the hours of frustration vendors can experience when they are placed in the middle of communications between their insurance agent and a compliance administrator.



The screenshot shows an email from myCOI to "Sample Company, LLC". The email header includes the myCOI logo and the text "Sample Company, LLC" and "Please Register Today!". Below this is a placeholder for a logo with the text "Your Logo Here" and the myCOI logo. The main body of the email contains the following text:

**Demo Account has requested that you join their online certificate of insurance tracking portal.**

To register, please click the link below. If you have already signed up for a company other than Demo Account, you may use the same username/password.

[Click Here to Register!](#)

You are receiving this message because your contract with Demo Account requires that you submit a Certificate of Insurance. Demo Account is using this system to make the process more efficient for all people involved, including you.

**Account Setup**

To register, all you need is an internet connection and less than 5 minutes. During registration, all of your insurance agent(s) contact information will be collected.

Agent Information Required:

- Name
- Address
- Phone Number
- Email Address

**Benefits to You**

- Certificates of insurance are collected directly from your insurance agent so that you are able to use the time you would otherwise be spending managing certificates focusing on your business.
- If your agent does not submit a compliant certificate in a timely manner, you will be notified.

**Further Questions**

You may visit our [Knowledge Base](#) to view frequently asked questions and other support articles. If you have a specific question, please email or call us using the contact information below.

Thank you for your participation,  
Your Name  
Title

myCOI | [www.myCOITracking.com](http://www.myCOITracking.com)  
(888) 692-2448 ext 105  
[support@myCOITracking.com](mailto:support@myCOITracking.com)

If you cannot click on the "Click Here to Register" link above, copy and paste this link into your internet browsers address bar:  
<http://www.myCOITracking.com/Communication/VendorRegistration.aspx?topic=c03a924c004f611a3a5f0292c0f8f80a>

powered by  
myCOI  
www.myCOITracking.com

The process begins with you receiving a registration invitation from myCOI. Selecting the "Click Here to Register" link will begin take you directly to the registration page.

The first page of the registration will ask you to set up a user name and password.

The screenshot shows the 'myCOI Tracking Success' registration page. At the top, there is a navigation bar with four steps: 1 Registration, 2 Contact Information, 3 Insurance Agents, and 4 Confirm Registration. The main heading is 'Please create a new account or log in'. Below this, there are two radio button options: 'I need to create a new account with myCOI' (selected) and 'I already have an account with myCOI and want to log in with it'. The first option leads to a registration form with fields for USERNAME, PASSWORD, and CONFIRM PASSWORD. The second option leads to a login form with fields for USERNAME and PASSWORD, and a link for 'Forgot your username or password?'. A list of required information for registration is provided, including agent name, agency name, address, phone number, email address, and policy lines. Password requirements are also listed: at least 8 characters, including at least one uppercase letter, one lowercase letter, and one number or special character. A 'Help' button is on the right, and a 'Next >' button is at the bottom right.

Next, you will then set a security question

The screenshot shows the 'myCOI Tracking Success' registration page at the 'Set Your Security Question & Answer' step. The navigation bar shows steps 1 Registration, 2 Contact Information, 3 Insurance Agents, and 4 Confirm Registration. The heading is 'Set Your Security Question & Answer'. Below the heading, it states: 'If you should ever forget your password and need to reset it, you will be asked to provide the answer to your chosen security question.' A dropdown menu is open, showing a list of security questions such as 'What was your childhood nickname?', 'What is the name of your favorite childhood friend?', 'What is your oldest sibling's birthday month and year?', 'What is your oldest sibling's middle name?', 'What was your childhood phone number including area code?', 'What was the name of your first stuffed animal?', 'What was the last name of your third grade teacher?', 'What is your youngest brother's birthday month and year?', 'In what city or town was your first job?', and 'What is the name of a college you applied to but didn't attend?'. A '< Back' button is on the left, and a 'Next >' button is on the right.

The next part of the registration will ask you to review and confirm that the contact information myCOI has on file is correct. If the information is incorrect, you will revise the information on this screen before moving forward.

**Your Contact Information**  
This is the person from your organization to whom myCOI will send notification regarding your compliance status.  
\* Indicates a required field.

COMPANY NAME \*  
FIRST NAME \*  
LAST NAME \*  
ADDRESS 1 \*  
ADDRESS 2  
CITY \*  
COUNTRY \*  
UNITED STATES  
STATE/PROVINCE \*  
ALASKA  
POSTAL CODE \*  
PHONE \*  
EXT: \*  
SECONDARY PHONE  
EXT: \*  
FAX \*  
I DON'T HAVE A FAX NUMBER  
EMAIL \*  
COMPANY TAX ID  
YEAR COMPANY STARTED

DO YOU HAVE EMPLOYEES IN THE FOLLOWING STATES? (CHECK ALL THAT APPLY)  
[WHAT'S THIS?](#)  
 NORTH DAKOTA  OHIO  WASHINGTON  WYOMING

Help

Next you will be asked to add your insurance agent contact information and select the policy lines the insurance agent writes for you. If you have multiple insurance agents, there is an "add another agent" button located at the bottom of the screen.

**1 Registration 2 Contact Information 3 Insurance Agents 4 Confirm Registration**

**Agent Contact Information**  
This is the person we will contact to provide certificates of insurance for the policy lines you indicate on the right. You may need to call your insurance agent to get this information.  
\* Indicates a required field.

AGENT NAME \*  
AGENCY \*  
ADDRESS 1 \*  
ADDRESS 2  
CITY \*  
COUNTRY \*  
UNITED STATES  
STATE/PROVINCE \*  
ALASKA  
POSTAL CODE \*  
PHONE \*  
EXT: \*  
ALTERNATE PHONE  
EXT: \*  
AGENCY FAX  
AGENCY EMAIL \*

**Select the types of insurance this agent writes for you:**  
 GENERAL LIABILITY  
 AUTOMOBILE LIABILITY  
 UMBRELLA/EXCESS  
 WORKERS COMPENSATION  
 PROPERTY INSURANCE  
 PROFESSIONAL LIABILITY  
 POLLUTION / ENVIRONMENTAL  
 CARGO LIABILITY  
 LEASED EQUIPMENT  
 RIGGER'S LIABILITY  
 BAILEE'S CUSTOMERS GOODS  
 INSTALLATION FLOATER  
 WAREHOUSE LIABILITY  
 BUILDER'S RISK  
 STOP GAP  
 LIQUOR LIABILITY  
 BOILER & MACHINERY

I HAVE A WORK COMP WAIVER/CLEARANCE

< Back Add Another Agent I'm Done >

Help

Once you are finished adding your insurance agent(s), click the "I'm Done" button.

Including the agent's correct email address and selecting the correct types of insurance the agent writes is critical to myCOI's success in obtaining the necessary insurance documents.

On the next screen, you will be able to confirm the information you entered for your insurance agent(s). You are able to go back and revise the information if needed. Once you have confirmed that all insurance agents have been added and all data is correct, click the "Next" button.

1 Registration 2 Contact Information 3 Insurance Agents 4 Confirm Registration

## Review Insurance Agents

### WORKERS COMP WAIVER/SELF-INSURED

If you have a Workers Compensation Waiver or are Self-Insured, you must add your personal contact information as the Agent for the related policy lines.

[Add Another Agent](#)

Name	Agency	# Lines of Coverage	Agent Type	Edit	Delete
ABC Agent	123 Agency	6	Insurance Agent		

[< Back](#)

[Next >](#)

This completes the myCOI registration process! The myCOI system will automatically reach out to your insurance agent(s), using the email address you provided during registration, to obtain a copy of the certificate of insurance and any other necessary insurance related documents.

myCOI Tracking Success. (888) 692-6448 | [Get help](#)

1 Registration 2 Contact Information 3 Insurance Agents 4 Confirm Registration

## Thank You for Registering with myCOI

### What happens next?

We will contact your insurance agent(s) shortly to begin requesting certificates of insurance for Demo Account (unless you are self-insured). Please let your insurance agent(s) know that we will be emailing them from the email address [CertificateRequest@myCOIsolution.com](mailto:CertificateRequest@myCOIsolution.com) to request certificates of insurance and that their response is required in order for us to report your compliance.

If you have any further questions about this process, or would like to give us feedback, please email us at [support@myCOItracking.com](mailto:support@myCOItracking.com) or call us at 888-692-6448 x105.

Does your company track Certificates of Insurance? Would you like an easier way to complete the task?  
[Request a demo today!](#)

For security purposes we suggest closing your browser window.

Help

## Need more help?

Our myCOI Care Team is always there for you!

[1-317-759-9426 ext 105](tel:1-317-759-9426)

[support@myCOItracking.com](mailto:support@myCOItracking.com)



**EXHIBIT 9**

**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
DEPARTMENT OF ENVIRONMENT**

**AND**



---

**(Subject of Agreement)**

---

**BRANDON JOHNSON  
MAYOR**

**ANGELA TOVAR  
CHIEF SUSTAINABILITY OFFICER**

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**PROFESSIONAL SERVICES AGREEMENT**

**TABLE OF CONTENTS**

ARTICLE 1. DEFINITIONS . . . . . 1

    1.1 Definitions ..... 1

    1.2 Interpretation ..... 2

    1.3 Order of Precedence..... 2

    1.4 Incorporation of Exhibits ..... 3

ARTICLE 2. DUTIES AND RESPONSIBILITIES OF CONTRACTOR . . . . . 3

    2.1 Scope of Services..... 3

    2.2 Deliverables ..... 3

    2.3 Standard of Performance ..... 4

    2.4 Personnel..... 4

    2.5 Minority and Women's Business Enterprises Commitment ..... 5

    2.6 Insurance..... 5

    2.7 Indemnification..... 6

    2.8 Ownership of Documents..... 7

    2.9 Copyright Ownership ..... 7

    2.10 Records and Audits ..... 8

    2.11 Confidentiality ..... 9

    2.12 Assignments and Subcontracts ..... 10

ARTICLE 3. DURATION OF AGREEMENT . . . . . 11

    3.1 Term of Performance..... 11

    3.2 Timeliness of Performance ..... 11

    3.3 Agreement Extension Option ..... 12

ARTICLE 4. COMPENSATION . . . . . 12

    4.1 Basis of Payment..... 12

    4.2 Method of Payment ..... 12

    4.3 Funding ..... 12

    4.4 Non-Appropriation..... 12

ARTICLE 5. DISPUTES . . . . . 13

    5.1 Procedure for Bringing Disputes to the Department ..... 13

ARTICLE 6. COMPLIANCE WITH ALL LAWS . . . . . 13

    6.1 Compliance with All Laws Generally ..... 13

    6.2 Nondiscrimination ..... 14

    6.3 Inspector General..... 15

    6.4 MacBride Ordinance..... 15

    6.5 Business Relationships with Elected Officials ..... 16

    6.6 Wages..... 16

    6.7 Environmental Warranties and Representations..... 16

    6.8 Prohibition on Certain Contributions ..... 17

    6.9 Firms Owned or Operated by Individuals with Disabilities ..... 18

    6.10 Ineligibility to do Business with City ..... 18

    6.11 Duty to Report Corrupt or Unlawful Activity ..... 18

    6.12 Policy Prohibiting Sexual Harassment (Section 2-92-612 of the Chicago Municipal Code) ..... 18

    6.13 Policy on Non-Disclosure of Salary History (Section 2-92-385 of the Chicago

**Municipal Code)..... 19**

**6.14 Deemed Inclusion ..... 20**

**ARTICLE 7. SPECIAL CONDITIONS . . . . . 20**

**7.1 Warranties and Representations ..... 20**

**7.2 Ethics ..... 21**

**7.3 Joint and Several Liability ..... 22**

**7.4 Business Documents ..... 22**

**7.5 Conflicts of Interest..... 22**

**7.6 Non-Liability of Public Officials ..... 23**

**7.7 EDS / Certification Regarding Suspension and Debarment ..... 23**

**ARTICLE 8. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND  
RIGHT TO OFFSET . . . . . 23**

**8.1 Events of Default Defined..... 23**

**8.2 Remedies ..... 24**

**8.3 Early Termination.....- 26 -**

**8.4 Suspension.....- 27 -**

**8.5 Right to Offset.....- 27 -**

**ARTICLE 9. GENERAL CONDITIONS . . . . . - 28 -**

**9.1 Entire Agreement .....- 28 -**

**9.2 Counterparts.....- 28 -**

**9.3 Amendments .....- 29 -**

**9.4 Governing Law and Jurisdiction .....- 29 -**

**9.5 Severability .....- 29 -**

**9.6 Assigns.....- 29 -**

**9.7 Cooperation.....- 29 -**

**9.8 Waiver .....- 30 -**

**9.9 Independent Contractor .....- 30 -**

**ARTICLE 10. NOTICES . . . . . - 31 -**

**ARTICLE 11. AUTHORITY . . . . . - 32 -**

**SIGNATURE PAGE(S) . . . . . 33**

## **List of Exhibits**

EXHIBIT 1	SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE
EXHIBIT 2	SCHEDULE OF COMPENSATION
EXHIBIT 3	SPECIAL CONDITIONS REGARDING MBE/WBE COMMITMENT AND MBE/WBE COMPLIANCE PLAN
EXHIBIT 4	ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT
EXHIBIT 5	INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE
EXHIBIT 6	INTENTIONALLY OMITTED
EXHIBIT 7	LIST OF KEY PERSONNEL
EXHIBIT 8	SEXUAL HARASSMENT POLICY AFFIDAVIT (SECTION 2-92-612)
EXHIBIT 9	PROVISIONS REQUIRED IF FEDERAL FUNDS ARE INVOLVED
EXHIBIT 10	CITY'S DATA PROTECTION REQUIREMENTS
EXHIBIT 11	SUPPLEMENTAL CONTRACT TERMS RELATING TO EXECUTIVE ORDER 2021-2

## **AGREEMENT**

This Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_, a \_\_\_\_\_ corporation ("**Contractor**"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Environment ("**City**"), at Chicago, Illinois. The City and Contractor agree as follows:

## **TERMS AND CONDITIONS**

### **ARTICLE 1. DEFINITIONS**

#### **1.1 Definitions**

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

**"Additional Services"** means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 2.1, and 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 9.3 of this Agreement before Contractor is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

**"Agreement"** means this Professional Services Agreement, including all exhibits 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.

**"Commissioner"** means the Chief Sustainability Officer, and any representative authorized in writing to act on the Chief Sustainability Officer's behalf.

**"Department"** means the City Department of Environment.

**"Services"** means, collectively, the services, duties and responsibilities described in Article 2 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

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

## **1.2 Interpretation**

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

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

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

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

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

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

## **1.3 Order of Precedence**

The order of precedence of the component Agreement parts will be as follows:

- If funded by the Federal Government, terms required by the Federal Government, whether set out in this document (Exhibit 9), or otherwise.
- Exhibit 1 Scope of Work and Time Limits For Performance
- All other parts of this Agreement.

Provided, however, in the event of an inconsistency between terms set out among different component parts of the Agreement, or terms set out within an Agreement part, notwithstanding the order of precedence noted above, the term that is most favorable to the City controls, unless expressly stated otherwise.

#### **1.4 Incorporation of Exhibits**

The following attached Exhibits are made a part of this Agreement:

Exhibit 1	Scope of Services and Time Limits for Performance
Exhibit 2	Schedule of Compensation
Exhibit 3	Special Conditions Regarding MBE/WBE Commitment
Exhibit 4	Economic Disclosure Statement and Affidavit
Exhibit 5	Insurance Requirements and Evidence of Insurance
Exhibit 6	Intentionally Omitted
Exhibit 7	List of Key Personnel
Exhibit 8	Sexual Harassment Policy Affidavit (Section 2-92-612)
Exhibit 9	Provisions Required If Federal Funds Are Involved
Exhibit 10	City's Data Protection Requirements

### **ARTICLE 2. DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

#### **2.1 Scope of Services**

This description of Services is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Agreement. Contractor must provide the Services in accordance with the standards of performance set forth in Section 2.3. The Services that Contractor must provide are described in Exhibit 1, Scope of Services and Time Limits for Performance.

#### **2.2 Deliverables**

In carrying out its Services, Contractor must prepare or provide to the City various Deliverables. "**Deliverables**" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor 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 Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 8.1.

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

### **2.3 Standard of Performance**

Contractor must perform all Services required of it 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. Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. **Any review, approval, acceptance of Services or Deliverables or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor under this Agreement, at law or in equity.**

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

If Contractor fails to comply with the foregoing standards, Contractor must, at the City's option, perform again, at its 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 (b)(ii) regarding failure to comply with licensure requirements.

### **2.4 Personnel**

#### **(a) Adequate Staffing**

Contractor 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 exclusively to perform the Services. Contractor must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Contractor to the City and with prior written consent of the City.

**(b) Key Personnel**

Contractor must not reassign or replace Key Personnel without the written consent of the City. "Key Personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Section 2.4(b). The Department may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor must immediately suspend the key person or persons from performing Services under this Agreement and must replace him or them in accordance with the terms of this Agreement. Key Personnel, if any, are identified in Exhibit 7.

**(c) Salaries and Wages**

Contractor and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Contractor underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Contractor, 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 Contractor to the respective employees to whom they are due. The parties acknowledge that this Section 2.4(c) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

**2.5 Minority and Women's Business Enterprises Commitment**

In the performance of this Agreement, including the procurement and lease of materials or equipment, Contractor must abide by the minority and women's business enterprise commitment requirements of the Municipal Code of Chicago ("**Municipal Code**"), §2-92-420 *et seq.* (1990), except to the extent waived by the Chief Procurement Officer and the Special Conditions Regarding MBE/WBE Commitment set forth in Exhibit 3. Contractor's completed Schedules C-1 and D-1 in Exhibit 3, evidencing its compliance with this requirement, are a part of this Agreement, upon acceptance by the Chief Procurement Officer. Contractor must utilize minority and women's business enterprises at the greater of the amounts listed in those Schedules C-1 and D-1 or the percentages listed in them as applied to all payments received from the City. For all things relating to MBE/WBE compliance, those functions, including the ones described in Exhibit 11 Supplemental Contract Terms Relating to Executive Order 2021-1, will be performed by the Commissioner and not the CPO. However, firms will be certified by the City's Department of Procurement Services.

**2.6 Insurance**

Contractor must provide and maintain at Contractor's own expense, during the term of this Agreement and any time period following expiration if Contractor is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 5 of this Agreement, insuring all operations related to this Agreement.

## **2.7 Indemnification**

(a) Contractor must defend, indemnify, 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) Contractor's failure to perform or cause to be performed Contractor's promises and obligations as and when required under this Agreement, including Contractor's failure to perform its obligations to any Subcontractor;

(iv) the City's exercise of its rights and remedies under Section 8.2 of this Agreement; and

(v) injuries to or death of any employee of Contractor 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 Contractor's breach of this Agreement or to Contractor's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.

(c) At the City Corporation Counsel's option, Contractor 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 Contractor of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

(d) To the extent permissible by law, Contractor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any Losses, including any claim by any employee of Contractor 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 Contractor's performance of Services beyond the term. Contractor acknowledges that the requirements set forth in this section to defend, indemnify, and hold harmless the City are apart from and not limited by the Contractor's duties under this Agreement, including the insurance requirements in Exhibit 5 of this Agreement.

## **2.8 Ownership of Documents**

All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Contractor under this Agreement are property of the City, including, as further described in Section 2.9 below, all copyrights inherent in them or their preparation. During performance of its Services, Contractor is responsible for any loss or damage to the Deliverables, data, findings or information while in Contractor's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Contractor. If not restorable, Contractor must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 2.7.

## **2.9 Copyright Ownership**

Contractor and the City intend that, to the extent permitted by law, the Deliverables to be produced by Contractor 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," Contractor hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Contractor will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Contractor warrants to the City, its successors and assigns, that on the date of transfer Contractor is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Contractor further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other

restrictions with respect to the Deliverables. Contractor warrants that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

## **2.10 Records and Audits**

### **(a) Records**

(i) Contractor 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, 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 Contractor fails to make such delivery upon demand, then Contractor must pay to the City any damages the City may sustain by reason of Contractor's failure.

(ii) Contractor must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period that is the longer of (A) 5 years after the final payment made in connection with this Agreement (or, 6 years after the final payment made in connection with this Agreement, with respect to any records that are required to be maintained pursuant to the Contractor's obligations under Exhibit 6 and the regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), which was part of the American Recovery and Reinvestment Act of 2009, specifically 45 C.F.R. § 164.530(j)), or (B) as directed by the Local Records Act (50 ILCS 205) and relevant records retention schedule. Contractor must not dispose of such records following the expiration of the relevant period without notification of and written approval from the City in accordance with Article 10.

In addition to the records to be stored by Contractor, all records that are possessed by Contractor in its service to the City to perform a governmental function are public records of the City pursuant to the Illinois Freedom of Information Act ("FOIA"), unless the records are exempt under the Act. FOIA requires that the City produce records in a very short period of time. If the Contractor receives a request from the City to produce records, the Contractor shall do so within 72 hours of the notice.

### **(b) Audits**

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

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

any such shared usages.

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

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

(v) The City may in its sole discretion audit the records of Contractor or its Subcontractors, or both, at any time during the term of this Agreement or within six 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 any such audit, it is determined that Contractor or any of its Subcontractors has overcharged the City in the audited period, the City will notify Contractor. Contractor must then promptly reimburse the City for any amounts the City has paid Contractor due to the overcharges and also some or all of the cost of the audit, as follows:

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

C. If the audit reveals that the Contractor was not paid the full amount required under the Agreement, the City will pay to the Contractor the sum equal to the amount of the deficiency.

Failure of Contractor to reimburse the City in accordance with subsection A or B above is an event of default under Section 8.1 of this Agreement, and Contractor will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

## **2.11 Confidentiality**

(a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Contractor 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. Contractor 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 Contractor 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. Contractor must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.

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

(c) If Contractor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Contractor's possession by reason of this Agreement, Contractor 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. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(d) HIPAA, HITECH, and AIDS Confidentiality Act. To the extent not defined herein the capitalized terms below and in Exhibit 6 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 (collectively "HIPAA"). See 45 CFR parts 160, 162 and 164. Contractor and all its Subcontractors must comply with HIPAA and all rules and regulations applicable to it or them. Contractor must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16) and the rules and regulations of the Illinois Department of Public Health promulgated under it. If Contractor fails to comply with the applicable provisions under HIPAA or the Illinois AIDS Confidentiality Act, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be provided.

Additionally, if Contractor is a Business Associate it must comply with all requirements of the HIPAA applicable to Business Associates including the provisions contained in Exhibit 6.

## **2.12 Assignments and Subcontracts**

(a) Contractor must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement: (i) unless otherwise provided for elsewhere in this Agreement; or (ii) without the express written consent of the Department. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Department, including approvals for the use of any Subcontractors, operate to relieve Contractor of any of its obligations or liabilities under this Agreement.

(b) All Subcontractors are subject to the prior approval of the Department. Approval for the use of any Subcontractor in performance of the Services is conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to perform the Services in accordance with 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 Contractor

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 Contractor of any of its obligations or liabilities under this Agreement.

(c) Contractor, upon entering into any agreement with a Subcontractor, must furnish upon request of the Department a copy of its agreement. Contractor must ensure that all subcontracts 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. 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.

(d) Contractor must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the Department. 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 Contractor under this Agreement, without such prior written approval, has no effect upon the City.

(e) Under §2-92-245 of the Municipal Code, 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 Contractor that amount directly. Such payment by the City to Contractor's Subcontractor under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

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

### **ARTICLE 3. DURATION OF AGREEMENT**

#### **3.1 Term of Performance**

This Agreement takes effect as of the Effective Date and continues, except as provided under Sections 4.4 or Article 8, until \_\_\_\_\_, as that date may be extended under Section 3.3.

#### **3.2 Timeliness of Performance**

(a) Contractor must provide the Services and Deliverables within the time limits required under any request for services pursuant to the provisions of Section 2.1 and Exhibit 1. **Further, Contractor acknowledges that TIME IS OF THE ESSENCE and that the failure of Contractor to comply with the required time limits may result in economic or other losses to the City.**

(b) Neither Contractor nor Contractor's agents, employees or Subcontractors are

entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

### **3.3 Agreement Extension Option**

The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to \_\_\_\_\_ years, under the same terms and conditions as this original Agreement, by notice in writing to Contractor.

## **ARTICLE 4. COMPENSATION**

### **4.1 Basis of Payment**

The City will pay Contractor according to the Schedule of Compensation in the attached Exhibit 2 for the completion of the Services in accordance with this Agreement, including the standard of performance in Section 2.3.

### **4.2 Method of Payment**

Contractor must submit monthly invoices (in triplicate) to the City for labor and other direct costs as billed, as outlined in the Schedule of Compensation in Exhibit 2. The invoices must be in such detail as the City requests. The City will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

### **4.3 Funding**

The source of funds for payments under this Agreement is Fund number \_\_\_\_\_. Payments under this Agreement must not exceed \$ \_\_\_\_\_ without a written amendment in accordance with Section 9.3. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the City.

### **4.4 Non-Appropriation**

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City will notify Contractor in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification will be made to Contractor except that no payments will be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.



## **ARTICLE 5. DISPUTES**

### **5.1 Procedure for Bringing Disputes to the Department**

The Contractor and using Department must attempt to resolve all disputes arising under this Contract in good faith, taking such measures as, but not limited to investigating the facts of the dispute and meeting to discuss the issue(s).

In order to bring a dispute to the Commissioner of a Department, Contractor must provide a general statement of the basis for its claim, the facts underlying the claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the claim. By submitting a Claim, the Contractor certifies that:

- A. The Claim is made in good faith;
- B. The Claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
- C. The amount of the Claim accurately reflects the amount that the claimant believes is due from the City; and
- D. The certifying person is duly authorized by the claimant to certify the Claim.

The Commissioner shall have 30 days from receipt of the Claim to render a written "final decision of the Commissioner" stating the Commissioner's factual and contractual basis for the decision. However, the Commissioner may take an additional period, not to exceed 10 days, to render the final decision. If the Commissioner does not render a "final decision of the Commissioner" within the prescribed time frame, then the Claim should be deemed denied by the Commissioner.

## **ARTICLE 6. COMPLIANCE WITH ALL LAWS**

### **6.1 Compliance with All Laws Generally**

(a) Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 6, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also. Further, Contractor must execute an Economic Disclosure Statement and Affidavit ("**EDS**") in the form attached to this Agreement as Exhibit 4. Notwithstanding acceptance by the City of the EDS, Contractor's failure in the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Contractor must promptly update its EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate. Contractor agrees that Contractor's failure to maintain current throughout the term and any extensions of the term, the 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, shall constitute an event of default.

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

## **6.2 Nondiscrimination**

### **(a) Contractor**

Contractor must comply with applicable federal, state, and local laws and related regulations prohibiting discrimination against individuals and groups. If this Agreement is federally funded in whole or in part, additional provisions related to nondiscrimination may be set forth in Exhibit 9.

#### **(i) Federal Requirements**

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

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

#### **(ii) State Requirements**

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

(iii) **City Requirements**

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Chicago Human Rights Ordinance, Ch. 6-10, Section 6-10-010 *et seq.* of the Municipal Code of Chicago, as amended, and all other applicable City ordinances and rules.

(b) **Subcontractors**

Contractor must incorporate all of this Section 6.2 by reference in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the federal, state, and local agencies charged with enforcing such laws and regulations, including the Chicago Commission on Human Relations.

**6.3 Inspector General**

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

**6.4 MacBride Ordinance**

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if Contractor conducts any business operations in Northern Ireland, the Contractor must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section 6.4 do not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

## **6.5 Business Relationships with Elected Officials**

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

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

## **6.6 Wages**

Contractor must pay the highest of (1) prevailing wage/Davis-Bacon rate, if applicable; (2) minimum wage specified by Chicago Mayoral Executive Order 2014-1, as adjusted; (3) Chicago Minimum Wage rate specified by MCC Chapter 6-105, or (4) the highest applicable State or Federal minimum wage. The Chicago minimum wage rates and Mayoral Executive Order wage rates increase on July 1 of each year and are posted on the City website.

## **6.7 Environmental Warranties and Representations**

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

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
- 11-4-1500 Treatment and disposal of solid or liquid waste;
- 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory, Contractor's or any subcontractor's

violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Commissioner. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

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

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

### **6.8 Prohibition on Certain Contributions**

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

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

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

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

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a

breach and default under this Contract, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Contract, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

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

For purposes of this provision:

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

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

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

#### **6.9 Firms Owned or Operated by Individuals with Disabilities**

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

#### **6.10 Ineligibility to do Business with City**

Failure by the Contractor or any Controlling Person (defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code shall render this Contract voidable or subject to termination, at the option of the Commissioner. Contractor agrees that Contractor's failure to maintain eligibility (or failure by Controlling Persons 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.

#### **6.11 Duty to Report Corrupt or Unlawful Activity**

Pursuant to §2-156-018 of the Municipal Code, it is the duty of the Contractor to report to the Inspector General, directly and without undue delay, any and all information concerning conduct which it knows to involve corrupt activity. "Corrupt Activity" means any conduct set forth in Subparagraph (a)(1), (2) or (3) of §1-23-020 of the Municipal Code. Knowing failure to make such a report will be an event of default under this Agreement. Reports may be made to the Inspector General's toll free hotline, 866-IG-TIPLINE (866-448-4754).

#### **6.12 Policy Prohibiting Sexual Harassment (Section 2-92-612 of the Chicago**

### **Municipal Code)**

For purposes of this section, “Sexual Harassment” is as defined in MCC 6-10-020. For the avoidance of doubt, Contractor will be considered an “Employer” as defined in MCC 6-10-020.

In accordance with MCC 2-92-612, Contractor must attest by affidavit that Contractor has a written policy, compliant with the requirements of MCC 6-10-040, prohibiting Sexual Harassment. The affidavit must be in a form acceptable to the Chief Procurement Officer. Contractor’s affidavit is attached as the Appendix titled “Sexual Harassment Policy Affidavit.”

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

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

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

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

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

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

- (1) Contractor shall not screen job applicants based on their wage or salary history, including by requiring that an applicant’s prior wages, including benefits or other compensation, satisfy minimum or maximum criteria; or by requesting or requiring an applicant to disclose prior wages or salary, either (i) as a condition of being interviewed, (ii) as a condition of continuing to be considered for an offer of employment, (iii) as a condition of an offer of employment or an offer of compensation, or (iv) as a condition of employment; and

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

Contractor's affidavit is included in the Exhibit titled "Affidavit Regarding Policy on Non-Disclosure of Salary History".

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

#### **6.14 Deemed Inclusion**

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

### **ARTICLE 7. SPECIAL CONDITIONS**

#### **7.1 Warranties and Representations**

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

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

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

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

(d) warrants that Contractor and its 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;

(e) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own



analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;

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

(g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 8.2 and 8.3 of this Agreement; and

(h) warrants and represents that neither Contractor nor an Affiliate of Contractor (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce (or their successors), or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment. "Affiliate of Contractor" means a person or entity that directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common control with Contractor. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity (either acting individually or acting jointly or in concert with others) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

## **7.2 Ethics**

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

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

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to Contractor or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(b) Contractor must comply with Chapter 2-156 of the Municipal Code. Contractor acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156, including any contract entered into with any person who has retained or employed a non-registered lobbyist in violation of Section 2-156-305 of the Municipal Code is voidable as to the City.

### **7.3 Joint and Several Liability**

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

### **7.4 Business Documents**

At the request of the City, Contractor must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

### **7.5 Conflicts of Interest**

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

(b) Contractor represents that it, and to the best of its knowledge, its Subcontractors if any (Contractor and Subcontractors will be collectively referred to in this Section 7.5 as "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any direct or indirect interest in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the City, Consulting Parties must disclose to the City their past client lists and the names of any clients with whom they have an ongoing relationship. Consulting Parties are not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Consulting Parties' past or present clients. If Consulting Parties become aware of a conflict, they 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) Further, Consulting Parties must not assign any person having any conflicting

interest to perform any Services under this Agreement or have access to any confidential information, as described in Section 2.11 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Consulting Parties' services for others conflict with the Services that Consulting Parties are to render for the City under this Agreement, Consulting Parties 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 Contractor under this Agreement, Contractor represents that it is 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, Contractor must execute a Certification Regarding Lobbying, which is part of the EDS and incorporated by reference as if fully set forth here.

#### **7.6 Non-Liability of Public Officials**

Contractor and any assignee or Subcontractor of Contractor 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.

#### **7.7 EDS / Certification Regarding Suspension and Debarment**

Contractor certifies, as further evidenced in the EDS attached as Exhibit 4, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If Contractor or any lower tier participant is unable to certify to this statement, it must attach an explanation to the Agreement.

### **ARTICLE 8. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET**

#### **8.1 Events of Default Defined**

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 Contractor to the City.
- (b) Contractor's material failure to perform any of its obligations under this Agreement including the following:
  - (i) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely 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 reasonably satisfactory to the Commissioner 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, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;
- (vi) Discontinuance of the Services for reasons within Contractor's reasonable control;
- (vii) Failure to comply with Section 6.1 in the performance of the Agreement;
- (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;
- (ix) Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination; and
- (x) Any other acts specifically stated in this Agreement as constituting an act of default.

(c) Any change in ownership or control of Contractor without the prior written approval of the Commissioner (when such prior approval is permissible by law), which approval the Commissioner will not unreasonably withhold.

(d) Contractor's default under any other agreement it may presently have or may enter into with the City for the duration of this Agreement. Contractor acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other agreements.

(e) Contractor's violation of City ordinance(s) unrelated to performance under the Agreement such that, in the opinion of the Commissioner, it indicates a willful or reckless disregard for City laws and regulations.

## **8.2 Remedies**

(a) Notices. The occurrence of any event of default permits the City, at the City's sole option, to declare Contractor in default. The Commissioner may in his sole discretion give Contractor 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 Commissioner. Whether to declare Contractor in default is within the sole discretion of the Commissioner 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 Contractor 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 he may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the Commissioner decides not to terminate, this decision will not preclude him 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 Contractor fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 8.2 and Article 10, Contractor 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.

(b) Exercise of Remedies. After giving a Default Notice, the City may invoke any or all of the following remedies:

(i) The right to take over and complete the Services, or any part of them, at Contractor's expense and as agent for Contractor, either directly or through others, and bill Contractor for the cost of the Services, and Contractor must pay the difference between the total amount of this bill and the amount the City would have paid Contractor under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for Contractor under this Section 8.2;

(ii) 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;

(iii) The right of specific performance, an injunction or any other appropriate equitable remedy;

(iv) The right to money damages;

(v) The right to withhold all or any part of Contractor's compensation under this Agreement;

(vi) The right to deem Contractor non-responsible in future contracts to be awarded by the City;

(vii) The right to declare default on any other contract or agreement Contractor may have with the City.

(c) City's Reservation of Rights. If the Commissioner considers it to be in the City's best interests, the Commissioner 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 Contractor to continue to provide the Services despite one or more events of default, Contractor is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

(d) Non-Exclusivity of Remedies. 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.

### **8.3 Early Termination**

(a) In addition to termination under Sections 8.1 and 8.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Contractor. The City will give notice to Contractor in accordance with the provisions of Article 10. The effective date of termination will be the date the notice is received by Contractor 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 10 of this Agreement (if no date is given) or upon the effective date stated in the notice.

(b) After the notice is received, Contractor must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 4, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Contractor must attempt to agree on the amount of compensation to be paid to Contractor, but if not agreed on, the dispute must be settled in accordance with Article 5 of this Agreement. The payment so made to Contractor is in full settlement for all Services satisfactorily performed under this Agreement.

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

(d) If the City's election to terminate this Agreement for default under Sections 8.1 and 8.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 8.3.

#### **8.4 Suspension**

The City may at any time request that Contractor suspend its Services, or any part of them, by giving 15 days prior written notice to Contractor or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Contractor must promptly resume its 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 Commissioner and Contractor when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Contractor as a result of recommencing the Services must be treated in accordance with the compensation provisions under Article 4 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Contractor by written notice to the City may treat the suspension as an early termination of this Agreement under Section 8.3.

#### **8.5 Right to Offset**

(a) In connection with Contractor's 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 Contractor's performance or non-performance;
- (ii) if the City exercises any of its remedies under Section 8.2 of this Agreement;
- (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, Contractor is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

(b) As provided under Section 2-92-380 of the Municipal Code, the City may set off from Contractor's compensation under this Agreement an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and the amount of any debt owed by Contractor to the City.

(c) In connection with any liquidated or unliquidated claims against Contractor, and 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 Contractor unrelated to this Agreement. When the City's claims against Contractor are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City

will reimburse Contractor to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

## **ARTICLE 9. GENERAL CONDITIONS**

### **9.1 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**

Contractor acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor, 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**

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

### **9.2 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.



### **9.3 Amendments**

Except as provided in Section 3.3 of this Agreement, no changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Contractor and by the Commissioner or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 9.3.

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

### **9.4 Governing Law and Jurisdiction**

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

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

### **9.5 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.

### **9.6 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.

### **9.7 Cooperation**

Contractor must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to ensure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration. Following termination or expiration of this Agreement, rights and obligations that by their nature should survive or which this Agreement expressly states will survive will remain in full force and effect.

## **9.8 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 Contractor's performance in any respect or waives a requirement or condition to either the City's or Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Contractor in writing.

## **9.9 Independent Contractor**

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

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

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

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

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

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

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

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

(iv) In the event of any communication to Contractor by a City employee or City official in violation of Section (ii) above, or advocating a violation of Section (iii) above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City’s Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement. Contractor will also cooperate with any inquiries by OIG Hiring Oversight related to the contract.

(d) The parties agree that this Contract is solely for the benefit of the parties and nothing herein is intended to create any third party beneficiary rights for subcontractors or other third parties.

**ARTICLE 10. NOTICES**

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

If to the City: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chicago, Illinois 60602  
Attention: Commissioner

A copy of any communications or notices to the City relating to Contract interpretation, a dispute, or indemnification obligations shall also be sent by the same means set forth above to:

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

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 10. Notices delivered by mail are considered received three days after mailing in accordance with this Article 10. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

**ARTICLE 11. AUTHORITY**

Execution of this Agreement by Contractor is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Contractor have been made with complete and full authority to commit Contractor 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.

*[Signature Pages, Exhibits and Schedules follow.]*

**SIGNATURE PAGE(S)**  
**SIGNED at Chicago, Illinois:**

CITY OF CHICAGO

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

CONTRACTOR<sup>1</sup>

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

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

State of

County of

This instrument was acknowledged before me on \_\_\_\_\_ (date) by  
\_(name/s of person/s) as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.) of  
\_\_(name of party on behalf of whom instrument was executed).

(Signature of Notary Public)

Seal:

---

<sup>1</sup>If Contractor is a joint venture or other legal entity for which this signature format is inappropriate, please substitute an appropriate signature page with appropriate attestation and notarization.

**EXHIBIT 1**  
SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE

**EXHIBIT 2**  
SCHEDULE OF COMPENSATION

**EXHIBIT 3**  
**SPECIAL CONDITIONS REGARDING MBE/WBE COMMITMENT**  
**AND MBE/WBE COMPLIANCE PLAN**



**CITY OF CHICAGO**  
**Department of Procurement Services**  
**Sharla Roberts, Chief Procurement Officer**  
121 North LaSalle Street, Room 806  
Chicago, Illinois 60602-1284

**Fax: 312-744-3281**

**MBE & WBE SPECIAL CONDITIONS FOR COMMODITIES OR SERVICES CONTRACTS**

**A. SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR COMMODITIES OR SERVICES**

**a. Policy and Terms**

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

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all non-construction contracts to certified WBEs.

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

MBE Percentage	WBE Percentage
_____%	_____%

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

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



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

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

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

#### **b. Definitions**

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

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

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

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

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

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

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

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

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

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

**"Directory"** means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE, and WBE firms.

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

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

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

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

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

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

**"Supplier" or "Distributor"** refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

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

**c. Joint Ventures**

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint

venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

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

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

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

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

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

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

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

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

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

**d. Counting MBE/WBE Participation Toward the Contract Specific Goals**

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

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

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

- d. If the MBE or WBE is a manufacturer: 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- e. If the MBE or WBE is a distributor or supplier: 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- f. If the MBE or WBE is a broker:
  - i. Zero percent (0%) of expenditures paid to brokers will be counted toward the Contract Specific Goals.
  - ii. As defined above, Brokers provide no commercially useful function.
- g. If the MBE or WBE is a member of the joint venture contractor/bidder:
  - i. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals; or
  - ii. If employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in the Schedule B.
  - iii. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs.
- h. If the MBE or WBE subcontracts out any of its work:
  - i. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
  - ii. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except as allowed by (c) above).
  - iii. The fees or commissions charged for providing a bona fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - iv. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - v. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

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

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

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

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

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

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

#### **i. Direct Participation**

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

- a. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct work identified or related to the advertised bid/proposal. Documentation must include but is not necessarily limited to:
  1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
  2. A listing of all MBE/WBE firms contacted that includes:
    - Name, address, telephone number and email of MBE/WBE firms solicited;
    - Date and time of contact;
    - Method of contact (written, telephone, transmittal of facsimile documents, email, etc.)

3. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
  - Project identification and location;
  - Classification/commodity of work items for which quotations were sought;
  - Date, item and location for acceptance of subcontractor bid proposals;
  - Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
  - Affirmation that Good Faith Efforts have been demonstrated by:
    - choosing subcontracting opportunities likely to achieve MBE/WBE goals; and
    - not imposing any limiting conditions which were not mandatory for all subcontractors; and
    - providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date; and
    - documented efforts or actual commitment to the indirect participation of MBE/WBE firms.

**OR**

- b. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:
  1. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
    - A listing of all potential subcontractors contacted for a quotation on that work item;
    - Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
  2. Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
    - The City's estimate for the work under a specific subcontract;
    - The bidder's own estimate for the work under the subcontract;
    - An average of the bona fide prices quoted for the subcontract;

- Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

**ii. Assist Agency Participation in waiver/reduction requests**

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

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

**iii. Impracticability**

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

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

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

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

**f. Procedure to Determine Bid Compliance**

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

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

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



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

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

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

The bidder must submit the appropriate Schedule C-1 with the bid for each MBE and WBE included on the Schedule D-1. Suppliers must submit the Schedule C-1 for Suppliers, first tier subcontractors must submit a Schedule C-1 for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C-1 for second tier Subcontractors. The City encourages subcontractors to utilize the electronic fillable format Schedule C-1, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Each Schedule C-1 must be executed by each MBE and WBE and accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C-1 has been submitted with the bid, an executed original Schedule C-1 must be submitted by the bidder for each MBE and WBE included on the Schedule D-1 within five business days after the date of the bid opening.

Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

**(2) Letters of Certification.**

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

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

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

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

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm. The City encourages bidders to utilize the electronic fillable format Schedule D-1, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section e "Regulations Governing Reductions to or Waiver of MBE/WBE Goals" herein, the

bidder must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, depends upon requirements agreements and blanket agreements, as percentages of the total estimated usage. All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the opening, the bidder may submit a revised Schedule D-1 (executed and notarized to conform with the Schedules C-1). Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

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

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

Any applications for City approval of a Mentor Protégé agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

**g. Reporting Requirements During the Term of the Contract**

- a. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.
- b. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- c. Once the prime Contractor has reported payments made to each subcontractor, including zero dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
- d. All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

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

- e. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records,

tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.

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

#### **h. Changes to Compliance Plan**

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

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

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

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

##### **ii. Procedure for Requesting Approval**

If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

- a) The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the

MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.

- b) The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.
- c) Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of Good Faith Efforts, must meet the requirements in section 5. If the MBE or WBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
- d) If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
- e) A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

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

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

Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract, at law or in equity: (1) failure to demonstrate Good Faith Efforts, except in the case of a contract where a bid incentive under MCC 2-92-525 was taken into consideration in the award; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.

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

Pursuant to MCC 2-92-445 or 2-92-740, as applicable, remedies or sanctions may include a penalty in the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs, and disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to MCC 2-92-445 or 2-92-740, within 15 business days of the final determination.

In the case of a contract for which a bid incentive under MCC 2-92-525 was taken into consideration in the award, any contractor that has failed to retain the percentage of MBE or WBE subcontractor committed to in order for the bid incentive to be allocated will be fined an amount equal to three times the amount of the bid incentive allocated, unless the contractor can demonstrate that due to

circumstances beyond the contractor's control, the contractor for good cause was unable to retain the percentage of MBE or WBE subcontractors throughout the duration of the contract period.

**j. Arbitration**

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

**k. Equal Employment Opportunity**

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

**l. Attachments and Schedules**

The following attachments and schedules follow, they may also be downloaded from the Internet at: <http://www.cityofchicago.org/forms>

- Attachment A: Assist Agencies
- Attachment B: Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals

- Schedule B: Affidavit of Joint Venture (MBE/WBE)
- Schedule C-1: Letter of Intent From MBE/WBE To Perform As Subcontractor, Supplier and/or Consultant
- Schedule D-1: Compliance Plan Regarding MBE/WBE Utilization

**Attachment A –Assist Agency List (Rev. May 2020)**

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

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

<p><b>51<sup>st</sup> Street Business Association *</b>                  220 E. 51<sup>st</sup> Street                  Chicago, IL 60615                  773-285-3401                  773-285-3407                  the51ststreetbusinessassociation@yahoo.com                  www.51stStreetChicago.com                  Maintains list of certified firms: Yes                  Provides training for businesses: Yes</p>	<p><b>African American Contractors Association – AACA *</b>                  P.O. Box #19670                  Chicago, IL 60619                  312-915-5960                  aacanatlassoc@gmail.com                  www.aacanatl.org                  Maintains list of certified firms: Yes                  Provides training for businesses: Yes</p>
<p><b>Angel of God Resource Center, Inc. *</b>                  14527 S. Halsted                  Riverdale, IL 60827                  708-392-9323                  708-880-0121                  info.aogrc@gmail.com                  www.angelofgodresourcecenter.org                  Maintains list of certified firms: Yes                  Provides training for businesses: Yes</p>	<p><b>Association of Asian Construction Enterprises (AACE) *</b>                  712 W. Root Street                  Chicago, IL 60609                  312-595-2010                  admin@acechicago.com                  www.acechicago.com                  Maintains list of certified firms: Yes                  Provides training for businesses: No</p>
<p><b>Austin African American Business Networking Assoc.</b>                  5820 W. Chicago Ave.                  Chicago, IL 60651                  773-626-4497                  info@aaabna.org                  www.aaabna.org                  Maintains list of certified firms: No                  Provides training for businesses: Yes</p>	<p><b>Better Business Bureau of Chicago/Northern Illinois</b>                  330 N Wabash, Suite 3120                  Chicago, IL 60611                  312 832-0500                  tjohnson@chicago.bbb.org                  www.bbb.org/chicago                  Maintains list of certified firms: Yes                  Provides training for businesses: Yes</p>
<p><b>Black Contractors Owners and Executives *</b>                  7811 S. Stony Island Ave.                  Chicago, IL 60649                  773-346-5658                  773-346-5659                  admin@bcoechicago.org  <a href="http://www.bcoechicago.org">www.bcoechicago.org</a>                  Maintains list of certified firms: No                  Provides training for businesses: No</p>	<p><b>Black Contractors United *</b>                  12000 S. Marshfield Ave.                  Calumet Park, IL 60827                  708-389-5730                  708-389-5735  <a href="http://www.blackcontractorsunited.com">www.blackcontractorsunited.com</a>                  Maintains list of certified firms: Yes                  Provides training for businesses: Yes</p>
<p><b>BOP Project 5000 NFP</b>                  644 E. 79<sup>th</sup> Street                  Chicago, IL 60619                  773-891-5939                  773-304-1903  <a href="mailto:bopbizcenter@gmail.com">bopbizcenter@gmail.com</a>                  Maintains list of certified firms: Yes                  Provides training for businesses: Yes</p>	<p><b>Business Leadership Council *</b>                  230 W. Monroe Street, Ste 2650                  Chicago, IL 60606                  312-628-7844                  312-628-7846                  Avis.l@businessleadershipcouncil.org  <a href="http://www.businessleadershipcouncil.org">www.businessleadershipcouncil.org</a>                  Maintains list of certified firms: Yes                  Provides training for businesses: No</p>

<p><b>Chatham Business Association Small Business Dev. *</b>  800 E. 78<sup>th</sup> Street  Chicago, IL 60619  773-994-5006  773-855-8905  <a href="mailto:admin@cbaworks.org">admin@cbaworks.org</a>  <a href="http://www.cbaworks.org">www.cbaworks.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Chicago Minority Supplier Development Council Inc. *</b>  105 W. Adams, Suite 2300  Chicago, IL 60603-6233  312-755-8880  312-755-8890 Fax  cjordan@chicagomsdc.org  www.chicagomsdc.org  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>Chicago Urban League *</b>  4510 S. Michigan Ave.  Chicago, IL 60653  773-285-5800  <a href="mailto:jjohnson@chiul.org">jjohnson@chiul.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Chicago Women in Trades (CWIT)</b>  2444 W. 16<sup>th</sup> Street  Chicago, IL 60608  312-942-1444  Jayne Vellinga, Executive Director  jvellinga@cwit2.org  www.chicagowomenintrades2.org  Maintains list of certified firms: No  Provides training for businesses: Yes</p>
<p><b>Contractor Advisors Business Development Corp. *</b>  1507 E. 53<sup>rd</sup> Street, Suite 906  Chicago, IL 60615  312-436-0301  <a href="mailto:info@contractoradvisors.us">info@contractoradvisors.us</a>  <a href="http://www.contractoradvisors.us">www.contractoradvisors.us</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Cosmopolitan Chamber of Commerce</b>  1631 S. Michigan Avenue Unit 101  Chicago, IL 60616  312-971-9594  eroper@cosmochamber.org  www.cosmochamber.org  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>Council of Black Architecture and Engineering Companies (Formally NOME)*</b>  1 South Wacker, Suite 2650  Chicago, IL 60606  312-960-1239  <a href="mailto:msutton@infrastructure-eng.com">msutton@infrastructure-eng.com</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Do For Self Community Development Co. *</b>  8659 S. Ingleside Ave.,  Chicago, IL 60619  773-356-7661  dennis@doforself.org  <a href="http://www.doforself.org">www.doforself.org</a>  Maintains list of certified firms: No  Provides training for businesses: Yes</p>
<p><b>Elite Service Disabled Veteran Owned Business Network</b>  420 Lake Cook Rd, Ste 104  Deerfield, IL 60015  847-453-8890  <a href="mailto:jscifers@scigon.com">jscifers@scigon.com</a>  <a href="http://www.elitesdvob.org">www.elitesdvob.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Far South Community Development Corporation</b>  9923 S. Halsted Street, Suite D  Chicago, IL 60628  773-941-4833  773-941-5252  lacy@farsouthcdc.org  www.farsouthcdc.org  Maintains list of certified firms: No  Provides training for businesses: Yes</p>
<p><b>Federation of Women Contractors *</b>  4210 W. Irving Park Road,  Chicago, IL 60641  312-360-1122  info@fwcchicago.com  <a href="http://www.fwcchicago.com">www.fwcchicago.com</a>  Maintains list of certified firms: Yes  Provides training for businesses: No</p>	<p><b>Fresh Start Home Community Development Corp.</b>  5168 S. Michigan Avenue, 4N  Chicago, IL 60615  773-312-3797  855-270-4175  <a href="mailto:Info@FreshStartNow.us">Info@FreshStartNow.us</a>  <a href="http://www.FreshStartNow.us">www.FreshStartNow.us</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>



<p><b>Greater Southwest Development Corporation</b>  2601 W. 63<sup>rd</sup> Street  Chicago, IL 60629  773-362-3373  <a href="mailto:c.james@greatersouthwest.org">c.james@greatersouthwest.org</a>  <a href="http://www.greatersouthwest.org">www.greatersouthwest.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Hispanic American Construction Industry Association (HACIA) *</b>  650 W. Lake St., Unit 415  Chicago, IL 60661  312-575-0389  312-575-0389  perez@haciaworks.org  <a href="http://www.haciaworks.org">www.haciaworks.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>Illinois State Black Chamber of Commerce *</b>  411 Hamilton Blvd., Suite 1404  Peoria, Illinois 61602  309-740-4430  309-672-1379  <a href="mailto:finance@ILBCC.org">finance@ILBCC.org</a>  <a href="http://www.ilbcc.org">www.ilbcc.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Illinois Hispanic Chamber of Commerce *</b>  222 Merchandise Mart Plaza, Suite 1212 c/o 1871  Chicago, IL 60654  312-425-9500  info@ihccbbusiness.net  www.ihccbbusiness.net  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>JLM Business Development Center*</b>  2622 W. Jackson Boulevard  Chicago, IL 60612  773-826-3064  773-359-4021 Fax  lady930@prodigy.net  www.jlmcenter.org  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>LGBT Chamber of Commerce of Illinois *</b>  3179 N. Clark St., 2nd Floor  Chicago, IL 60657  773-303-0167  773-303-0168  <a href="mailto:admin@lgbtcc.com">admin@lgbtcc.com</a>  <a href="http://www.lgbtcc.com">www.lgbtcc.com</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>Native American Chamber of Commerce of Illinois</b>  100 N. Riverside Plaza, Suite 1670  Chicago, IL 60606  630-926-1700  <a href="mailto:info@nacc-il.org">info@nacc-il.org</a>  www.nacc-il.org  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>NDIGO Foundation</b>  329 W. 18<sup>th</sup> Street, Ste 613  Chicago, IL 60616  312-264-6272  <a href="mailto:hhartman@ndigo.com">hhartman@ndigo.com</a>  <a href="http://www.ndigo.com">www.ndigo.com</a>  Maintains list of certified firms: No  Provides training for businesses: Yes</p>
<p><b>Rainbow/PUSH Coalition *</b>  930 E. 50<sup>th</sup> Street  Chicago, IL 60615  773-255-9067  773-256-2768  <a href="mailto:jmitchell@rainbowpush.org">jmitchell@rainbowpush.org</a>  <a href="http://www.rainbowpush.org">www.rainbowpush.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>RTW Veteran Center *</b>  7415 E. End, Suite 120  Chicago, IL 60649  800-974-2808  866-873-2494 Fax  rtwvetcenter@yahoo.com  www.rtwvetcenter.org  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>

<p><b>South Shore Chamber, Inc. *</b>  1750 E. 71<sup>st</sup> Street  Chicago, IL 60649-2000  773-955-9508  773-955-9554  Tonya Trice, Executive Director  <a href="mailto:info@southshorechamberinc.org">info@southshorechamberinc.org</a>  <a href="http://www.southshorechamberinc.org">www.southshorechamberinc.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Sustainable Options for Urban Living, Inc. (SOUL)</b>  11603 S. Throop Street  Chicago, IL 60643  773-250-1770 Ext 702  773 250-1770  <a href="mailto:Cyndi@soul-program.com">Cyndi@soul-program.com</a>  <a href="http://www.soul-program.com">www.soul-program.com</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>The Monroe Foundation</b>  1547 South Wolf Road  Hillside, Illinois 60162  773-315-9720  <a href="mailto:omonroe@themonroefoundation.org">omonroe@themonroefoundation.org</a>  <a href="http://www.themonroefoundation.org">www.themonroefoundation.org</a>  Maintains list of certified firms: No  Provides training for businesses: Yes</p>	<p><b>Turn 2 Growth</b>  15475 S. Park  South Holland, IL 60473  708-913-4700  <a href="mailto:info@turn2growth.org">info@turn2growth.org</a>  <a href="http://www.turn2growth.org">www.turn2growth.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>US Minority Contractors Association, Inc. *</b>  1250 S. Grove Ave. Suite 200  Barrington, IL 60010  847-352-5010  847-382-1787  <a href="mailto:larry.bullock@usminoritycontractors.org">larry.bullock@usminoritycontractors.org</a>  <a href="http://www.USMinorityContractors.org">www.USMinorityContractors.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>	<p><b>Women's Business Development Center *</b>  8 S. Michigan Ave., Suite 400  Chicago, IL 60603  312-853-3477x220  312-853-0145  <a href="mailto:edimenco@wbdc.org">edimenco@wbdc.org</a>  <a href="http://www.wbdc.org">www.wbdc.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: Yes</p>
<p><b>Women Construction Owners &amp; Executives (WCOE) *</b>  Chicago Caucus  308 Circle Avenue  Forest Park, IL 60130  708-366-1250  <a href="mailto:mkm@mkmservices.com">mkm@mkmservices.com</a>  <a href="http://www.wcoeusa.org">www.wcoeusa.org</a>  Maintains list of certified firms: Yes  Provides training for businesses: No</p>	

**Attachment B - Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals**

**On Bidder/Proposer's Letterhead – SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY**

RETURN RECEIPT REQUESTED

(Date)

**Specification No.:** {Specification Number}  
**Project Description:** {PROJECT DESCRIPTION}

(Assist Agency Name and Address – **SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY**)

Dear \_\_\_\_\_:

\_\_\_\_\_ (Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due \_\_\_\_\_ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

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Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/ Minority/Women Business Enterprise contract goal. **Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted.** If you are aware of such a firm, please contact

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Name of Company Representative at Address/Phone

within (10) ten business days of receipt of this letter.

Under the City of Chicago's MBE/WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within ten (10) working days of your receipt of this letter to:

Monica Jimenez, Deputy Procurement Officer  
Department of Procurement Services  
City of Chicago  
121 North La Salle Street, Room 806  
Chicago, Illinois 60602

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

Sincerely,

Schedule B – Affidavit of Joint Venture

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

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

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

- I. Name of joint venture: \_\_\_\_\_  
Address of joint venture: \_\_\_\_\_  
Phone number of joint venture: \_\_\_\_\_
- II. Identify each non-MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_
- III. Identify each MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_
- IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.
- VI. Ownership of the Joint Venture.
  - A. What are the percentage(s) of MBE/WBE ownership of the joint venture?  
MBE/WBE ownership percentage(s) \_\_\_\_\_  
Non-MBE/WBE ownership percentage(s) \_\_\_\_\_
  - B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):
    - 1. Profit and loss sharing: \_\_\_\_\_
    - 2. Capital contributions:
      - (a) Dollar amounts of initial contribution: \_\_\_\_\_

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

\_\_\_\_\_

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

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

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

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

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

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

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

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

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

A. Joint venture check signing:

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

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

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

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

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

D. Acquisition of lines of credit:

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

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

E. Acquisition and indemnification of payment and performance bonds:

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F. Negotiating and signing labor agreements:

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

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

VIII. Financial Controls of joint venture:

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

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

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

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

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

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

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

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

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

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

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

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

_____ Name of MBE/WBE Partner Firm	_____ Name of Non-MBE/WBE Partner Firm
_____ Signature of Affiant	_____ Signature of Affiant
_____ Name and Title of Affiant	_____ Name and Title of Affiant
_____ Date	_____ Date

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

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

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

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

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

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

(SEAL)



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



**FOR  
NON-CONSTRUCTION  
PROJECTS ONLY**

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

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

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

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

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

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

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

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

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

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

**SUB-SUBCONTRACTING LEVELS**

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

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

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

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

One or more owners or principals of the Prime Contractor ( ) does / ( ) does not have an ownership interest in the undersigned. Provide names of such individuals and their respective ownership percentages, or indicate "none." Attach additional sheets if necessary: \_\_\_\_\_

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

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

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

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

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

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



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

**FOR  
NON-CONSTRUCTION  
PROJECTS ONLY**

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

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

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

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

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

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

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

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

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

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

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

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

<sup>1</sup> The Prime Contractor may claim an additional 0.5 percent participation credit (up to a maximum of five (5) percent) for every one (1) percent of the value of the contract performed by the MBE/WBE protégé firm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**5.** Attach Additional Sheets as Needed

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

**NOTE:** This section need not be completed if the MBE/WBE goals have been met through the direct participation outlined in Section I. If the MBE/WBE goals have not been met through direct participation, Contractor is required to demonstrate Good Faith Efforts pursuant to the MBE/WBE Special Conditions in a request for a waiver or reduction of MBE/WBE goals. Indirect participation may be considered as part of such Good Faith Efforts in support of the requested waiver or reduction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**5.** Attach Additional Sheets as Needed

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

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

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

1. MBE Direct Participation

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

2. MBE Indirect Participation

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

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

1. WBE Direct Participation

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

2. WBE Indirect Participation

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

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

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

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

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

One or more owners or principals of the Prime Contractor ( ) does / ( ) does not have an ownership interest in any MBE or WBE listed in this Schedule D. Provide names of such individuals and their respective ownership percentages, and identify the MBE/WBE firms in which such ownership is held, or indicate "none." Add additional sheets if necessary:

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

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

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

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

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

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

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

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

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

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

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

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

SEAL:

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

**EXHIBIT 4**  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT

**ATTACH CONTRACTOR'S COMPLETED EDS HERE.**

**EXHIBIT 5**  
INSURANCE REQUIREMENTS AND  
EVIDENCE OF INSURANCE

**ATTACH INSURANCE REQUIREMENTS AND COMPLETED CERTIFICATE OF  
INSURANCE HERE.**



**EXHIBIT 6**  
**INTENTIONALLY OMITTED**

**EXHIBIT 7**  
LIST OF KEY PERSONNEL

Name/Title:

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**EXHIBIT 8**  
**SEXUAL HARASSMENT POLICY AFFIDAVIT (SECTION 2-92-612)**

The policy prohibiting sexual harassment as described in Section 2-92-612 of the Municipal Code of Chicago ("MCC") is applicable to contracts paid from funds belonging to or administered by the City.

In accordance with requirements set forth in Section 2-92-612 of the MCC, Contractor hereby attests that Contractor has a written policy prohibiting sexual harassment in compliance with Section 6-10-040 of the MCC.

In accordance with Section 6-10-040 of the MCC, Contractor's written policy prohibiting sexual harassment shall include, at a minimum, the following information:

- (i) a statement that sexual harassment is illegal in Chicago;
- (ii) the following definition of sexual harassment: "Sexual harassment' means any (i) unwelcome sexual advances or unwelcome conduct of a sexual nature; or (ii) requests for sexual favors or conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; or (iii) sexual misconduct, which means any behavior of a sexual nature which also involves coercion, abuse of authority, or misuse of an individual's employment position.";
- (iii) a requirement that all employees participate in: (1) sexual harassment prevention training annually, (a) Employees shall participate in a minimum of one hour of sexual harassment prevention training annually, and (b) Anyone who supervises or manages employees shall participate in a minimum of two hours of sexual harassment prevention training annually, and (2) one hour of bystander training annually;
- (iv) Examples of prohibited conduct that constitute sexual harassment;
- (v) Details on: (1) how an individual can report an allegation of sexual harassment, including, as appropriate, instructions on how to make a confidential report, with an internal complaint form, to a manager, employer's corporate headquarters or human resources department, or other internal reporting mechanism; and (2) legal services, including governmental, available to employees who may be victims of sexual harassment; and
- (vi) A statement that retaliation for reporting sexual harassment is illegal in Chicago.

Contractor understands that it may be required to produce records to the Commissioner to verify the information provided. Under penalty of perjury the person signing below: (1) warrants that he/she is authorized to execute this Affidavit on behalf of Contractor, and (2) warrants that all certifications and statements contained in this Affidavit are true, accurate, and complete as of the date of execution.

Name of Contractor: \_\_\_\_\_

(Print or Type)

Signature of Authorized Officer: \_\_\_\_\_

(Signature)

Title of Signatory: \_\_\_\_\_

(Print or Type)

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

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

Signed and sworn (or affirmed) to before me on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name/s of person/s making statement).

\_\_\_\_\_

(Signature of Notary Public)

(Seal)

**EXHIBIT 9**  
PROVISIONS REQUIRED IF FEDERAL FUNDS ARE INVOLVED

## EXHIBIT 10

### Data Protection Requirements for Contractors, Vendors and Third-Parties

"Breach" means the acquisition, access, use, or disclosure of Protected Information that compromises the security or privacy of the Protected Information.

"Contractor" means an entity that receives or encounters Protected Information. Contractor includes, without limitation, entities that store Protected Information, or host applications that process Protected Information. The provisions of this Data Policy includes not only the entity that is a signatory to this Policy but all subcontractors, of whatever tier, of that entity; the signatory must inform and obtain the agreement of such subcontractors to the terms of this Data Policy.

"Protected Information" means all data provided by City to Contractor or encountered by Contractor in the performance of the services to the City, including, without limitation, all data sent to Contractor by City and/or stored by Contractor on its servers. Protected Information includes, but is not limited to, employment records, medical and health records, personal financial records (or other personally identifiable information), research data, and classified government information. To the extent there is any uncertainty as to whether any data constitutes Protected Information, the data in question shall be treated as Protected Information.

1. Information Security. Contractor agrees to the following:

- 1.1. General. Notwithstanding any other obligation of Contractor under this policy, Contractor agrees that it will not lose, alter, or delete, either intentionally or unintentionally, any Protected Information, and that it is responsible for the safe-keeping of all such information, except to the extent that the City directs the Contractor in writing to do so.
- 1.2. Access to Data. In addition to the records to be stored / maintained by Contractor, all records that are possessed by Contractor in its service to the City of Chicago to perform a governmental function are public records of the City of Chicago pursuant to the Illinois Freedom of Information Act (FOIA), unless the records are exempt under the Act. FOIA requires that the City produce records in a very short period of time. If the Contractor receives a request from the City to produce records, the Contractor shall do so within 72 hours of the notice.
- 1.3. Minimum Standard for Data at Rest and Data in Motion. Contractor must, at a minimum, comply, in its treatment of Protected Information, with National Institute of Standards and Technology (NIST) Special Publication 800-53 Moderate Level Control. Notwithstanding this requirement, Contractor acknowledges that it must fully comply with each additional obligation contained in this policy. If data is protected health information or electronic protected health information, as defined in the Health Insurance Portability and Accountability Act and Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH) and regulations implementing these Acts (see 45 CFR Parts 160 and 164), it must be secured in accordance with "Guidance Specifying the Technologies and Methodologies that Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals," available on the United States Department of Health and Human Services (HHS) website <https://www.hhs.gov/hipaa/for-professionals/breach-notification/guidance/index.html>, or at Volume 74 of the Federal Register, beginning at page 42741. That guidance from the HHS states that valid encryption processes for protected health information data at rest (e.g., protected health information resting on a server), must be consistent with the NIST Special Publication 800-111, Guide for Storage Encryption Technologies for End User Devices. Valid encryption processes for protected health information data in motion (e.g., transmitted through a network) are those which comply with NIST Special Publications 800-52, Guidelines for the Selection and Use of Transport Layer Security Implementation; 800-77, Guide to

IPsec VPNs; or 800-113, Guide to SSL VPNs, or others which are Federal Information Processing Standards (FIPS) 140-2 validated.

- 1.4. Where Data is to be Stored. All data must be processed, stored, and disposed of only on computer systems located in the continental United States.
- 1.5. Requirement to Maintain Security Program. Contractor acknowledges that the City has implemented an information security program to protect the City's information assets, which Program is available on the City website at <https://www.chicago.gov/content/dam/city/depts/dti/pdfs/ISTP.pdf> ("City Program"). Contractor shall be responsible for establishing and maintaining an information security program that is designed to: (i) ensure the security and confidentiality of Protected Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Protected Information; (iii) protect against unauthorized access to or use of Protected Information; (iv) ensure the proper disposal of Protected Information; and, (v) ensure that all subcontractors of Contractor, if any, comply with all of the foregoing.
- 1.6. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described herein, in no case shall the safeguards of Contractor's information security program be less stringent than the information security safeguards used by the City Program.
- 1.7. Right of Audit by the City of Chicago. The City of Chicago shall have the right to review Contractor's information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the performance of the Services, from time to time and without notice, the City of Chicago, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Contractor's information security program. In lieu of an on-site audit, upon request by the City of Chicago, Contractor agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by the City of Chicago or the City of Chicago's designee regarding Contractor's information security program.
- 1.8. Audit by Contractor. No less than annually, Contractor shall conduct an independent third-party audit of its information security program and provide such audit findings to the City of Chicago, all at the Contractor's sole expense.
- 1.9. Audit Findings. Contractor shall implement at its sole expense any remedial actions as identified by the City as a result of the audit.
- 1.10. Demonstrate Compliance - PCI. No less than annually, as defined by the City of Chicago and where applicable, the Contractor agrees to demonstrate compliance with PCI DSS (Payment Card Industry Data Security Standard). Upon City's request, Contractor must be prepared to demonstrate compliance of any system or component used to process, store, or transmit cardholder data that is operated by the Contractor as part of its service. Similarly, upon City's request, Contractor must demonstrate the compliance of any third party it has sub-contracted as part of the service offering. As evidence of compliance, the Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
- 1.11. Demonstrate Compliance – HIPAA/ HITECH. If the Protected Information includes protected health information or electronic protected health information covered under HIPAA/HITECH, Contractor must execute, and be governed by, the provisions in its contract with the City regarding HIPAA/HITECH, the regulations implementing those Acts, and the Business Associate Agreement in its contract with the City. As specified in 1.3, protected health information must be secured in accordance with the "Guidance Specifying the Technologies and Methodologies that Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals."
- 1.12. Data Confidentiality. Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to the City of Chicago or an individual identified with the data or information in Contractor's custody.
- 1.13. Compliance with All Laws and Regulations. Contractor agrees that it will comply with all laws and regulations.
- 1.14. Limitation of Access. Contractor will not knowingly permit any Contractor personnel to have access to any City of Chicago facility or any records or data of the City of Chicago if the person has been convicted of a crime in connection with (i) a dishonest act, breach of trust, or money laundering, or (ii) a felony.

Contractor must, to the extent permitted by law, conduct a check of public records in all of the employee's states of residence and employment for at least the last five years in order to verify the above. Contractor shall assure that all contracts with subcontractors impose these obligations on the subcontractors and shall monitor the subcontractors' compliance with such obligations.

- 1.15. Data Re-Use. Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. As required by Federal law, Contractor further agrees that no City of Chicago data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by an officer of the City of Chicago with designated data, security, or signature authority.
- 1.16. Safekeeping and Security. Contractor will be responsible for safekeeping all keys, access codes, passwords, combinations, access cards, personal identification numbers and similar security codes and identifiers issued to Contractor's employees, agents or subcontractors. Contractor agrees to require its employees to promptly report a lost or stolen access device or information to their primary business contact and to the City of Chicago Information Security Office.
- 1.17. Mandatory Disclosure of Protected Information. If Contractor is compelled by law or regulation to disclose any Protected Information, the Contractor will provide to the City of Chicago with prompt written notice so that the City of Chicago may seek an appropriate protective order or other remedy. If a remedy acceptable to the City of Chicago is not obtained by the date that the Contractor must comply with the request, the Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
- 1.18. Data Breach. Contractor agrees to comply with all laws and regulations relating to data breach, including without limitation, the Illinois Personal Information Protection Act and other applicable breach disclosure laws and regulations. Data breaches of protected health information and electronic protected health information shall be governed by the provisions regarding HIPAA/HITECH, and the regulations implementing those Acts, in the Contractor's contract with the City, specifically the Business Associate Agreement in such contract. Contractor will immediately notify the City if security of any Protected Information has been breached, and will provide information as to that breach in such detail as requested by the City. Contractor will, if requested by the City, notify any affected individuals of such breach at the sole cost of the Contractor.
- 1.19. Data Sanitization and Safe Disposal. All physical and electronic records must be retained per federal, state and local laws and regulations, including the Local Records Act. Where disposal is approved, the Contractor agrees that prior to disposal or reuse of all magnetic media (e.g. hard disk, floppy disk, removable media, etc.) which may have contained City of Chicago data shall be submitted to a data sanitization process which meets or exceeds DoD 5220.28-M 3-pass specifications. Certification of the completion of data sanitization shall be provided to the City of Chicago within 10 days of completion. Acceptance of Certification of Data Sanitization by the Information Security Office of the City of Chicago is required prior to media reuse or disposal. All other materials which contain City of Chicago data shall be physically destroyed and shredded in accordance to NIST Special Publication 800-88, Guidelines for Media Sanitization, specifications.
- 1.20. End of Agreement Data Handling. The Contractor agrees that upon termination of this Agreement it shall return all data to the City of Chicago in a useable electronic form, and erase, destroy, and render unreadable all data in its entirety in accordance to the prior stated Data Sanitization and Safe Disposal provisions. Data must be rendered in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities. Certification in writing that these actions have been completed must be provided within 30 days of the termination of this Agreement or within 7 days of a request of an agent of the City of Chicago, whichever shall come first.

## EXHIBIT 11



## **SUPPLEMENTAL CONTRACT TERMS RELATING TO EXECUTIVE ORDER 2021-2**

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

#### **1.1.1. Policy**

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

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

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

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

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

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

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

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

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

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

#### **1.2.1. Policy**

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

#### **1.2.2. Definitions**

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

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

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

Contractor must submit an annual report on July 1 of each year (or other date designated by the CPO) containing information about the Contractor's Business Diversity Program, if information is available.

However, for Contracts awarded June 1 through July 1, the due date for the first annual report will be August 1, all subsequent reports will be due July 1. Information to be provided will include:

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

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

#### **1.2.4. Applicability**

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

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

However, Contractors not required to report may report voluntarily.

**EXHIBIT 10**

**SEXUAL HARASSMENT POLICY AFFIDAVIT (SECTION 2-92-612)**

The policy prohibiting sexual harassment as described in Section 2-92-612 of the Municipal Code of Chicago ("MCC") is applicable to contracts paid from funds belonging to or administered by the City.

In accordance with requirements set forth in Section 2-92-612 of the MCC, Contractor hereby attests that Contractor has a written policy prohibiting sexual harassment in compliance with Section 6-10-040 of the MCC.

In accordance with Section 6-10-040 of the MCC, Contractor's written policy prohibiting sexual harassment shall include, at a minimum, the following information:

- (i) a statement that sexual harassment is illegal in Chicago;
- (ii) the following definition of sexual harassment: "Sexual harassment" means any (i) unwelcome sexual advances or unwelcome conduct of a sexual nature; or (ii) requests for sexual favors or conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment; or (iii) sexual misconduct, which means any behavior of a sexual nature which also involves coercion, abuse of authority, or misuse of an individual's employment position.";
- (iii) a requirement that all employees participate in: (1) sexual harassment prevention training annually, (a) Employees shall participate in a minimum of one hour of sexual harassment prevention training annually, and (b) Anyone who supervises or manages employees shall participate in a minimum of two hours of sexual harassment prevention training annually, and (2) one hour of bystander training annually;
- (iv) Examples of prohibited conduct that constitute sexual harassment;
- (v) Details on: (1) how an individual can report an allegation of sexual harassment, including, as appropriate, instructions on how to make a confidential report, with an internal complaint form, to a manager, employer's corporate headquarters or human resources department, or other internal reporting mechanism; and (2) legal services, including governmental, available to employees who may be victims of sexual harassment; and
- (vi) A statement that retaliation for reporting sexual harassment is illegal in Chicago.

Contractor understands that it may be required to produce records to the Commissioner to verify the information provided. Under penalty of perjury the person signing below: (1) warrants that he/she is authorized to execute this Affidavit on behalf of Contractor, and (2) warrants that all certifications and statements contained in this Affidavit are true, accurate, and complete as of the date of execution.

Name of Contractor: \_\_\_\_\_

(Print or Type)

Signature of Authorized Officer: \_\_\_\_\_

(Signature)

Title of Signatory: \_\_\_\_\_

(Print or Type)

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

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

Signed and sworn (or affirmed) to before me on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name/s of person/s making statement).

\_\_\_\_\_

(Signature of Notary Public)

(Seal)

**EXHIBIT 42 11**

**BUILDING ENERGY BENCHMARKING RULES**

## CHAPTER 18-14

### BUILDING ENERGY USE BENCHMARKING

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#### 18-14-101 General.

##### 18-14-101.1 Title.

##### 18-14-101.2 Scope.

##### 18-14-101.3 Definitions.

##### 18-14-101.4 Solicitation of compliance information and water usage data.

##### 18-14-101.5 Enforcement.

#### 18-14-102 Energy use benchmarking, verification, and disclosure requirements.

##### 18-14-102.1 Benchmarking.

##### 18-14-102.2 Data verification.

##### 18-14-102.3 Disclosure and rating.

#### **18-14-101 General.**

##### **18-14-101.1 Title.**

This Chapter 18-4 of Title 18 shall be known as the Building Energy Use Benchmarking Ordinance of the City of Chicago, and shall be cited as such. It is referred to herein as "this chapter".

(Added Coun. J. 9-11-13, p. 60628, § 1)

##### **18-14-101.2 Scope.**

This chapter applies to all covered buildings.

(Added Coun. J. 9-11-13, p. 60628, § 1)

##### **18-14-101.3 Definitions.**

For purposes of this chapter the following definitions shall apply:

"Benchmark" means to track and input a building's energy consumption data, water usage data and other relevant building information for 12 consecutive months, as required by the benchmarking tool, to quantify the building's energy use.

"Benchmarking tool" means the website-based software, commonly known as "Energy Star Portfolio Manager", developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy use of buildings nationwide. This term also applies to any successor system thereto, including any change or addition made to such tool by the United States Environmental Protection Agency.

"Building" means a structure, or part thereof, enclosing any use or occupancy.

"Certificate of occupancy" means the certificate issued by the zoning administrator or the building commissioner allowing building occupancy or use.

"Commissioner" means the city's commissioner of business affairs and consumer protection.

"Covered building" means any Group 1 covered building or Group 2 covered building, as defined by this chapter. The term "covered building" does not include any building where more than 10 percent of the floor area is classified as Group A-5, F, H, S, or U in accordance with Chapter 14B-3 of this Code.

"Data center" means a space specifically designed and equipped to meet the needs of high density computing equipment such as server racks, used for data storage and processing, as defined by the benchmarking tool.

"Energy performance rating" means an energy performance star designation that the commissioner assigns to a covered building pursuant to the energy performance rating system.

"Energy performance rating system" means a system for rating and classifying covered buildings' energy performance scores or, if a covered building does not receive an energy performance score from the benchmarking tool, its EUI. The system may also include the rating of covered buildings' energy performance improvement over time.

"Energy performance score" means the 1 to 100 numerical score produced by the benchmarking tool, also known as Energy Star score, or any successor score thereto. The energy performance score assesses a building's energy performance relative to similar buildings, based on source energy use, operating characteristics, and geographical location.

"Energy use intensity" or "EUI" means a numeric value calculated by the benchmarking tool that represents the energy consumed by a

building relative to its size.

"Group 1 covered building" means any building or group of buildings that have the same property identification or index number (PIN) or, with regard to condominium buildings, any building in which the first seven digits of the property identification or index number (PIN) of the units are the same, containing 250,000 or more gross square feet, as identified by the commissioner.

"Group 2 covered building" means any building or group of buildings that have the same property identification or index number (PIN) or, with regard to condominium buildings, any building in which the first seven digits of the property identification or index number (PIN) of the units are the same, containing 50,000 or more gross square feet but less than 250,000 gross square feet, as identified by the commissioner.

"Gross square feet" means the total number of square feet measured between the exterior surfaces of the enclosing fixed walls of a building. The term "gross square feet" includes vent shafts, elevator shafts, flues, pipe shafts, vertical ducts, stairwells, light wells, basement space, mechanical or electrical rooms, and interior parking.

"Licensed professional" means a professional engineer or a registered architect licensed in the State of Illinois, or another trained individual as prescribed by rule.

"Owner" has the meaning ascribed to the term in Chapter 14B-2.

"Reported benchmarking information" means descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool related to the building's energy consumption, water usage and efficiency, as prescribed by rule. Reported benchmarking information includes, but is not limited to, the building identification number, address, square footage, energy performance score, energy use intensity, and annual greenhouse gas emissions, and water usage.

"Residential occupancy" means any building occupancy use classified as Group R in accordance with Chapter 14B-3 of this Code.

(Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1; Amend Coun. J. 4-10-19, p. 100029, Art. XIV, § 1)

#### **18-14-101.4 Solicitation of compliance information and water usage data.**

(a) (1) Within 30 days of a request by the building owner, each tenant of a unit in a covered building shall provide all information that cannot otherwise be acquired by the building owner and that is necessary for the building owner to comply with the requirements of this chapter.

(2) Any owner of a covered building shall request such information no later than March 1 of the years in which benchmarking is required by Section 18-14-102.1. If the owner of a covered building receives notice that a tenant intends to vacate a unit which is subject to the requirements of this subsection, the owner shall request the information specified in this subsection within 10 days of such notice, and the tenant shall provide such information within 30 days of the request.

(3) The failure of any tenant to provide the information required under this subsection to the owner of a covered building shall not relieve such owner of the obligation to benchmark the building as provided in Section 18-14-102.1, using all information otherwise available to the owner.

(4) Failure of any tenant to provide the information required under this subsection to the owner of a covered building shall create a rebuttable presumption that the owner, tenant, or both have not complied with the time limits specified in this section.

(5) If a tenant of a unit in a covered building fails to provide information to the owner of the building as provided in this subsection, the owner shall be considered to be in compliance with Section 18-14-102.1 with respect to the building if: (1) the owner proves that the owner has requested the tenant to provide such information as specified in this subsection; and (2) the owner has benchmarked the building as provided in Section 18-14-102.1, using all information otherwise available to the owner.

(b) The commissioner of water management may transmit water usage information for covered buildings to the commissioner. Except for covered buildings whose owners submit a request to the commissioner, in a form and manner provided by rule, that the buildings' water usage data not to be made public, the commissioner is authorized to make such water usage information readily available to the public. Notwithstanding any other provision of this chapter to the contrary, if the commissioner makes a covered building's water usage information readily available to the public as provided in this subsection, the covered building owner may, at the owner's option, decide to include such water usage data in the covered building's benchmark or reported benchmarking information but the covered building owner is not required to do so.

(Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1)

#### **18-14-101.5 Enforcement.**

(a) The commissioner is authorized to enforce this chapter. The commissioner is also authorized to adopt rules and regulations for the proper administration and enforcement of this chapter.

(b) Any person who violates this chapter may be subject to a fine of up to \$100.00 for the first violation, and an additional fine of up to \$25.00 for each day that the violation continues.

(Added Coun. J. 9-11-13, p. 60628, § 1)

#### **18-14-102 Energy use benchmarking, verification, and disclosure requirements.**

##### **18-14-102.1 Benchmarking.**

(a) No later than June 1, 2014, and no later than June 1st each year thereafter, the owner of any Group 1 covered building shall

benchmark such building for the previous calendar year; provided, however, the owner of any Group 1 covered building with 10 percent or more residential occupancy shall benchmark such building for the previous calendar year no later than June 1, 2015, and no later than June 1st each year thereafter.

(b) No later than June 1, 2015, and no later than June 1st each year thereafter, the owner of any Group 2 covered building shall benchmark such building for the previous calendar year; provided, however, the owner of any Group 2 covered building with 10 percent or more residential occupancy shall benchmark such building for the previous calendar year no later than June 1, 2016, and no later than June 1st each year thereafter.

(c) The owner of any covered building shall retain all information tracked and input into the benchmarking tool for a minimum of three years beyond the date on which benchmarking was required.

**Exception:** The commissioner may exempt from the benchmarking requirement the owner of a covered building that submits documentation, in a form prescribed by rule, establishing any of the following:

(i) The building is presently experiencing qualifying financial distress, as defined by any of the following: (1) the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages, (2) the building is controlled by a court appointed receiver, or (3) the building has been acquired by a deed in lieu of foreclosure; or

(ii) The building had average physical occupancy of less than 50 percent throughout the calendar year for which benchmarking is required; or

(iii) The building is a new construction and the building's certificate of occupancy was issued during the calendar year for which benchmarking is required; or

(iv) The building had a change of ownership in the calendar year for which benchmarking is required.

(Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1)

#### **18-14-102.2 Data verification.**

Prior to the first benchmarking deadline prescribed by Section 18-14-102.1, and prior to each third benchmarking deadline thereafter, the owner of a covered building shall ensure that reported benchmarking information for that year is verified by a licensed professional. Such verification shall be in a form of a stamped and signed statement by a licensed professional attesting to the accuracy of the information. The owner of a covered building shall produce such statement for the most recent year in which verification of reported benchmarking information was required, in a form prescribed by rule, upon a written request by the commissioner.

**Exception:** The commissioner may exempt from the verification requirement the owner of a covered building that submits documentation, in a form prescribed by rule, establishing that compliance with this section will cause undue financial hardship. If no-cost or low-cost verification options are available, the commissioner may suggest that the covered building use such alternative options.

(Added Coun. J. 9-11-13, p. 60628, § 1)

#### **18-14-102.3 Disclosure and rating.**

(a) In accordance with the schedule prescribed by Section 18-14-102.1, the owner of any covered building shall submit reported benchmarking information for the previous calendar year, using the benchmarking tool, in a manner prescribed by the commissioner.

(b) The commissioner and the chief sustainability officer shall prepare and submit an annual report to the mayor and the city council reviewing and evaluating energy efficiency in covered buildings, including summary statistics on the most recent reported energy benchmarking information and a discussion of energy efficiency trends, cost savings, and job creation effects resulting from energy efficiency improvements.

(c) (1) The commissioner shall establish and implement an energy performance rating system that assigns stars to covered buildings based on such buildings' energy performance scores. Beginning in calendar year 2019, the commissioner shall annually, after covered buildings have submitted their reported benchmarking information as provided in 18-14-102.3, assign a rating to each covered building, as follows:

(i) A rating of four stars shall be assigned to those covered buildings whose energy performance scores are between 81 and 100, inclusive, or whose energy performance scores are between 61 and 80, inclusive, and which have shown a total of 10-point improvement in their energy performance scores in the previous two consecutive calendar years;

(ii) A rating of three stars shall be assigned to those covered buildings whose energy performance scores are between 61 and 80, inclusive, or whose energy performance scores are between 41 and 60, inclusive, and which have shown a total of 10-point improvement in their energy performance scores in the previous two consecutive calendar years;

(iii) A rating of two stars shall be assigned to those covered buildings whose energy performance scores are between 41 and 60, inclusive, or whose energy performance scores are between 11 and 40, inclusive, and which have shown a total of 10-point improvement in their energy performance scores in the previous two consecutive calendar years;

(iv) A rating of one star shall be assigned to those covered buildings whose energy performance scores are below 40; and

(v) A rating of zero star shall be assigned to those covered buildings whose reported benchmarking information is not timely submitted in violation of this chapter.

(2) In addition to the rating provided in subsection (c)(1) of this section, the commissioner is authorized to assign an additional



rating of half a star to a covered building that has an energy performance score which is close to: (i) the highest possible score; or (ii) the next higher rating, as determined by rule promulgated by the commissioner.

(3) No rating shall be assigned to those covered buildings that: (i) are exempt from the benchmarking requirement as provided in 18-14-102.1(c); (ii) do not receive an energy performance score or EUI from the benchmarking tool for technical reasons acceptable to the commissioner; or (iii) are unable to make energy efficiency improvements due to the building's infrastructure limitations or other acceptable technical reasons, as determined by the commissioner after reviewing the application, supporting documentations and other relevant materials submitted by the owner as provided by rule.

(4) For buildings with no energy performance scores, the energy performance rating shall be based on EUI as compared to national medians.

(5) The commissioner is authorized, by rule, to adjust the energy performance score thresholds for the energy performance rating system in order to ensure the energy performance ratings continue to reflect changing energy efficiency standards and best practices.

(d) The commissioner shall provide each covered building with an energy rating card indicating the covered building's current year energy performance rating. Provided, however, no energy rating card shall be provided to covered buildings: (i) that are exempt from public disclosure of reported benchmarking information as provided in 18-14-102.3, (ii) that are exempt from the benchmarking requirement as provided in 18-14-102.1, or (iii) that do not receive an energy performance score or EUI from the benchmarking tool for technical reasons acceptable to the commissioner.

(e) Upon receipt of an energy rating card, a covered building shall conspicuously post the energy rating card so that it is visible to the general public and to visitors prior to or upon entering the covered building. The energy rating card shall not be defaced, marred, camouflaged or hidden from public view.

(f) (1) A covered building owner, or agent thereof, shall not execute an oral or written lease or purchase agreement, contract to lease or sell, or accept any money or other valuable consideration in an application for an oral or written lease or purchase agreement for the entire building or a portion of the building without disclosing to the tenant, applicant or prospective buyer, in a form and manner prescribed by the commissioner by rule, the covered building's current calendar year energy performance rating or energy performance score. The tenant, applicant, or prospective buyer shall sign a receipt acknowledging that such tenant, applicant, or prospective buyer has received the disclosure required by this subsection.

(2) A covered building owner, or agent thereof, shall include a covered building's current calendar year energy performance rating or energy performance score in any advertisements for sale or lease of the covered building or a portion of the building.

**Exception:** No disclosure shall be required under this subsection (f) if any portion of the covered building is subject to the utility costs disclosure requirements and exceptions provided in Chapter 5-16 of this Code.

**Exception:** No disclosure shall be required under this subsection (f) if the covered building is exempt from the benchmarking requirement as provided in 18-14-102.1(c).

(g) The commissioner is authorized to make reported benchmarking information and energy performance ratings readily available to the public.

**Exception:** Unless a different result is mandated by applicable law, the commissioner shall not make readily available to the public any individually attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark.

**Exception:** Unless a different result is mandated by applicable law, the commissioner shall not make readily available to the public any individually attributable energy performance rating assigned to a covered building until six months after initial ratings are assigned.

**Exception:** Unless a different result is mandated by applicable law, the commissioner shall not make readily available to the public any individually attributable reported benchmarking information or energy performance rating pertaining to a covered building that contains a data center, television studio, or trading floor that together exceed 10 percent of the gross square footage of any such building until the commissioner determines that the benchmarking tool can make adequate adjustments for such facilities. When the commissioner determines that the benchmarking tool can make such adjustments, it shall report such determination to the mayor and the city council.

(Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1)

**EXHIBIT 12**

**BUILDING ENERGY BENCHMARKING RULES**

# CITY OF CHICAGO

## RULES



### **BUILDING ENERGY USE BENCHMARKING RULES**



Mayor Rahm Emanuel

Commissioner Rosa Escareno

BY AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION PURSUANT TO CHAPTERS 2-25 AND 18-14 OF THE MUNICIPAL CODE OF CHICAGO, THE BUILDING ENERGY USE BENCHMARKING RULES, WHICH WERE PUBLISHED AND BECAME EFFECTIVE ON JUNE 1, 2014, ARE HERE BY AMEDED AND REISSUED, AS FOLLOWS:

By Order of the Commissioner:

Signed: \_\_\_\_\_



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

2/4/19

Commissioner Rosa Escareno

Published: \_\_\_\_\_

Effective: \_\_\_\_\_

(THESE UPDATED BUILDING ENERGY USE BENCHMARKING RULES SUPERSEDE THE BUILDING ENERGY USE BENCHMARKING RULES WHICH WERE PUBLISHED AND BECAME EFFECTIVE ON JUNE 1, 2014)

**BUILDING ENERGY USE BENCHMARKING  
RULES**

**TABLE OF CONTENTS**

<b>Section</b>	<b>Title</b>	<b>PAGE</b>
<b>DEFINITIONS</b>		<b>4</b>
<b>ARTICLE I</b>		
<b>Section I</b>	<b>Identification of Covered Buildings</b>	<b>6</b>
<b>Section II</b>	<b>Mixed Use, Shared Systems, Shared Property Identification Numbers (PINs), and Other Special Cases</b>	<b>7</b>
<b>Section III</b>	<b>Compliance Timing</b>	<b>9</b>
<b>Section IV</b>	<b>Benchmarking Requirements</b>	<b>10</b>
<b>Section V</b>	<b>Energy Performance Rating</b>	<b>12</b>
<b>Section VI</b>	<b>Data Verification Requirements</b>	<b>13</b>
<b>Section VII</b>	<b>Reporting Requirements</b>	<b>16</b>
<b>Section VIII</b>	<b>Retention of Records</b>	<b>17</b>
<b>SECTION IX</b>	<b>Energy Performance Rating and Score Disclosure</b>	<b>17</b>
<b>Section X</b>	<b>Exemptions and Exceptions</b>	<b>18</b>
<b>ARTICLE II</b>		
<b>Section XI</b>	<b>Appeal Process</b>	<b>19</b>
<b>Section XII</b>	<b>Enforcement</b>	<b>19</b>
<b>APPENDIX</b>		
<b>Appendix A</b>	<b>Chapter 18-14. Building Energy Use Benchmarking</b>	<b>21</b>

## DEFINITIONS

**“Chicago Energy Benchmarking Guidance”** means instructional materials published by the City of Chicago to help covered buildings comply with the Ordinance. These materials are available on the City of Chicago Energy Benchmarking Website.

**“Commissioner”** has the meaning ascribed to the term in Section 18-14-101.3 of the Ordinance.

**“Covered Building”** has the meaning ascribed to the term in Section 18-14-101.3 of the Ordinance.

**“Chicago Energy Benchmarking Help Center”** refers to telephone and email support resources for specific questions about compliance with the Ordinance. Contact information for the Help Center is available on the City of Chicago Energy Benchmarking Website.

**“City of Chicago Energy Benchmarking Website”** means the URL <http://www.cityofchicago.org/energybenchmarking>, or any successor website published by the Department to convey information about the Ordinance and rules promulgated thereunder.

**“City of Chicago Energy Rating Website”** means the URL [www.ChicagoEnergyRating.org](http://www.ChicagoEnergyRating.org), or any successor website published by the Department to convey information about the energy performance rating system established by the Ordinance.

**“Energy Rating Card”** means a placard issued by the Commissioner indicating a covered building’s current energy performance rating.

**“Data Verification”** refers to the process of reviewing a building’s energy consumption, property use details, and other information required by the Benchmarking Tool and attesting to the accuracy of that information.

**“Department”** refers to the Chicago Department of Business Affairs and Consumer Protection and its designees tasked with implementation of the Ordinance and the rules promulgated thereunder.

**“Licensed Professional”** has the meaning ascribed to the term in Section 18-14-101.3 of the Ordinance.

**“ENERGY STAR Portfolio Manager”** has the meaning ascribed to the term “Benchmarking Tool” in Section 18-14-101.3 of the Ordinance.

**“ENERGY STAR Portfolio Manager Guidance”** means instructions provided by the United States Environmental Protection Agency for using ENERGY STAR Portfolio Manager software.

**“Energy Use Intensity” or “EUI”** has the meaning ascribed to the term in Section 18-14-101.3 of the Ordinance.

**“National Peer Dataset”** means the most up-to-date Commercial Buildings Energy Consumption Survey dataset maintained by the United States Energy Information Administration or similar survey datasets used by the U.S. Environmental Protection Agency to provide benchmarking information in the U.S. ENERGY STAR Portfolio Manager tool.

**“Owner”** means any person who alone, jointly or severally with others:

- a. Shall have legal title to any premises, or dwelling units, with or without accompanying actual possession thereof; or
- b. Shall have charge, care or control of any premises, dwelling or dwelling unit as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner.
- c. “Owner” includes the owner, his agent for the purpose of managing, controlling or collecting rents, any other person managing or controlling a building or premises or any part thereof and any person entitled to the control or direction of the management or disposition of a building or premises or of any part thereof.

**“Ordinance”** means Chapter 18-14 of the Municipal Code of Chicago, as amended, included here as Appendix A for informational purposes.

# ARTICLE I

## SECTION I. Identification of Covered Buildings

### Rule 1.01

a.) Pursuant to Section 18-14-101.3, the Ordinance covers municipal, commercial, and residential buildings that are 50,000 square feet or larger, with initial compliance deadlines based on size and occupancy.

b.) *Building size* refers to gross square footage, as defined by Section 18-14-101.3 of the Ordinance.

Gross square footage is *not* the same as rentable or leasable area, but rather includes all area inside the building. Rentable or leasable space is a sub-set of gross square footage.

In the case where there is an atrium, building Owners should count the gross square footage at the base level only.

Gross square footage should not include any exterior spaces such as balconies, exterior loading docks, or driveways.

c.) *Building occupancy* is determined by how space is used within a building. Specific occupancy uses covered by the Ordinance are described in Section 18-14-101.3 of the ordinance.

Common building occupancy uses covered by the Ordinance include, but are not limited to, commercial office, residential (including condominiums, apartment buildings, and cooperatives), hospitals and other health care facilities, schools, universities and other educational facilities, retail space (including shopping malls), museums and other cultural institutions, worship spaces, banks, entertainment centers, restaurants, and other personal services facilities.

Non-covered occupancy uses are described in Section 18-14-101.3 of the Ordinance.

### Rule 1.02

*Responsible Parties:* The Ordinance applies to Owners of Covered Buildings, as defined in Section 18-14-101.3 of the Ordinance. This definition includes, but is not limited to, legal title holders, managers, and their agents.

### Rule 1.03

a.) *Transfers of Ownership:* Except as otherwise provided in Section 18-14-102.1 (c) (iv) of the Ordinance, if a Covered Building changes ownership, the new Owner shall be responsible for benchmarking such building.

b.) *Information Sharing:* At the time of transfer of ownership of a Covered Building, the buyer and seller may arrange for the seller to provide to the buyer all information necessary for the buyer to benchmark the building, as well as all benchmarking records described in Rule 8.01.



Rule 1.04 a.) *Identification of Covered Buildings*: The Department may use multiple information sources to identify Covered Buildings, based on size and occupancy use. The Commissioner may create a list of Covered Buildings for purposes of making such list available to the public. The Department may also notify Owners of their Covered Buildings' status or designation, as determined by the Commissioner.

b.) *Obligation to Comply*: Lack of notification by the Department does not relieve the Owner of a Covered Building of the obligation to comply with the Ordinance. No owner, however, will be cited in violation of the Ordinance without prior notification, as described in Section X of these Rules.

Rule 1.05 *Chicago Energy Benchmarking Identification Number (ID)*: The Department will assign a unique building identification number to each designated Covered Building to facilitate annual reporting of benchmarking data. Owners of Covered Buildings shall include this Chicago Energy Benchmarking ID in their buildings' ENERGY STAR Portfolio Manager profiles, according to Chicago Energy Benchmarking Guidance and ENERGY STAR Portfolio Manager Guidance.

However, the Owner of a Covered Building that has not received a Chicago Energy Benchmarking identification number is not relieved of the obligation to comply with the Ordinance. Such Owners may request a Chicago Energy Benchmarking ID through the process described in Rule 1.06.

Rule 1.06 *Requesting a Change of Building Designation*: If a building Owner does not agree with that building's designation as a Covered Building, the Owner may request a change in that building's covered status or other designation by submitting information and relevant evidence, using a form prescribed by the Department. The Department may revise a building's covered status or other designation based on the information provided by the Owner. Support resources for requesting a change of a building's designation, along with other Ordinance compliance resources or clarifications, may be facilitated by the Chicago Energy Benchmarking Help Center.

## **SECTION II. Mixed Use, Shared Systems, Shared Property Identification Numbers (PINs), and Other Special Cases**

Rule 2.01 *General*: Due to variation in the configuration, systems, and ownership structures of some Covered Buildings, consideration may be given to the "special cases" outlined below to facilitate compliance with the Ordinance.

Rule 2.02 *Mixed-Use Buildings*: Owners of Covered Buildings with mixed occupancy use shall benchmark, verify, and report in the same manner as Covered Buildings with single occupancy use, as described in Section IV of these Rules, according to ENERGY STAR Portfolio Manager Guidance and Chicago Energy Benchmarking Guidance.

- Rule 2.03      *Multiple Buildings with Shared Systems:* Owners of multiple Covered Buildings that share one or more energy-consuming systems or energy accounts, where energy use is not metered separately or sub-metered for one or more energy types, may benchmark, verify, and report as a single property, according to ENERGY STAR Portfolio Manager Guidance and Chicago Energy Benchmarking Guidance. This rule applies to Covered Buildings with the same or multiple Property Identification or Index Numbers (PIN).
- Rule 2.04      *Multiple Buildings with the Same Property Identification or Index Number (PIN) and Separate Systems:* The Owner of multiple Covered Buildings that share the same PIN, have separate energy-consuming systems, and are metered separately or sub-metered for all energy types (such as university, corporate, or other campuses where multiple Covered Buildings of various sizes share the same PIN) shall benchmark, verify, and report energy use separately for each building that is larger than 50,000 square feet, according to ENERGY STAR Portfolio Manager Guidance and Chicago Energy Benchmarking Guidance, and according to the compliance timeline described in Rule 3.01.
- The Owner of such Covered Buildings may request unique Chicago Energy Benchmarking IDs for each separately benchmarked building through the process described in Rule 1.06.
- Rule 2.05      *Single Buildings with Multiple Property Identification or Index Numbers (PIN):* The Owner or Owners of a single Covered Building with multiple PINs, including condominiums, shall benchmark, verify, and report energy use for the entire building, according to ENERGY STAR Portfolio Manager Guidance and Chicago Energy Benchmarking Guidance.
- Rule 2.06      *Buildings That Are Not Currently Eligible to Receive Energy Star Scores:* Owners of covered buildings that are not currently eligible to receive ENERGY STAR scores shall benchmark according to ENERGY STAR Portfolio Manager Guidance. The Benchmarking Tool enables Owners to calculate other relevant energy metrics, such as weather-normalized energy use intensity.
- Rule 2.07      *Notification to the Department of Special Cases:* To enable tracking of Covered Buildings with shared systems, shared Property Identification Numbers (PINs), and other special cases, the Owners of such buildings shall notify such special cases to the Department through the process described in Rule 1.06.

## SECTION III

### Compliance Timing

#### Rule 3.01

a.) *Benchmarking and Reporting Deadlines:* Pursuant to Section 18-14-102.1 and Section 18-14-102.3 of the Ordinance, benchmarking and reporting deadlines are follows:

- i. June 1, 2014 (and each June 1<sup>st</sup> thereafter): Commercial and municipal buildings of 250,000 square feet or larger;
- ii. June 1, 2015 (and each June 1<sup>st</sup> thereafter): Commercial and municipal buildings 50,000 square feet or larger, and residential buildings 250,000 square feet or larger;
- iii. June 1, 2016 (and each June 1<sup>st</sup> thereafter): Residential buildings 50,000 square feet or larger.

Pursuant to Section 18-14-102.1 of the Ordinance, the Owner of a Covered Building with 10 percent or more of its gross square footage used for residential occupancy shall comply with the residential building deadlines.

b.) *Data Verification Deadlines:* Pursuant to Section 18-14-102.2 of the Ordinance, Covered Building Data Verification must be conducted prior to the first benchmarking deadline prescribed by Section 18-14-102.1 and prior to each third benchmarking deadline thereafter (refer to Rule 3.01 for benchmarking deadlines by building size and occupancy).

c.) *Time Period of Benchmarking:* Pursuant to Section 18-14-102.1 the Owner of a Covered Building shall benchmark, verify, and report data from January 1<sup>st</sup> to December 31<sup>st</sup> of the calendar year prior to that in which these activities are required.

d.) Time period for compliance with energy performance rating requirements:

(1) The Commissioner shall designate energy performance ratings for covered buildings annually beginning in 2019 as provided in Section 18-14-102.3(c) of the Ordinance.

(2) The first energy performance rating designation shall be based on the benchmarking report for the calendar year 2018, which shall be reported no later than June 1<sup>st</sup> of 2019.

(3) The Commissioner shall not make public the energy performance rating designation of a covered building until six months after the first rating is assigned to such building. The Commissioner may make public a covered building's subsequent energy performance rating designations at any time after such designation.

(4) The Commissioner shall not provide a covered building's energy rating card until six months after the first energy performance rating is assigned to such building. The Commissioner may provide a covered building's

subsequent energy rating card at any time after energy performance rating is assigned to such building.

Rule 3.02

*If the Benchmarking Tool is Unavailable:* If the ENERGY STAR Portfolio Manager software is unavailable for use for a time period or duration that materially impacts the Owner of a Covered Building's ability to meet compliance deadlines, the Department may temporarily extend those deadlines to enable compliance.

## SECTION IV

### **Benchmarking and Scoring Requirements**

Rule 4.01

a.) *General:* No later than June 1<sup>st</sup> in the years in which the Owner of a Covered Building is required by the Ordinance to benchmark, Covered Building Owners or their representatives must input the building's total energy consumption data for all energy sources and other building information for January 1<sup>st</sup> through December 31<sup>st</sup> of the previous calendar year.

b.) *Benchmarking Using ENERGY STAR Portfolio Manager:* The Ordinance requires the Owners of Covered Buildings to use ENERGY STAR Portfolio Manager to benchmark and submit building data, as required by the software. ENERGY STAR Portfolio Manager software is free and available to the public at the website <http://www.energystar.gov/portfoliomanager>.

Unless explicitly directed otherwise, the Owners of Covered Buildings shall follow all ENERGY STAR Portfolio Manager Guidance. This includes inputting into ENERGY STAR Portfolio Manager all requested whole-building energy use data and requested details on specific property uses.

Owners of Covered Buildings are *not* required to track, verify, or report any financial or cost-related data, though Covered Buildings may choose to do so, according to ENERGY STAR Portfolio Manager guidance.

Rule 4.02

a.) *Whole-Building Energy Use Data:* ENERGY STAR Portfolio Manager requires whole-building energy use data. Owners of Covered Buildings may obtain this energy use data through several sources, including: energy utility bills, energy utility data aggregation services, or (when other sources are unavailable) tenants or other occupants of spaces within the Covered Building.

Whole-building energy use data includes energy generated on-site that is used within the building, including renewable energy, according to ENERGY STAR Portfolio Manager Guidance. Source energy and greenhouse gas emission metrics within ENERGY STAR Portfolio Manager will reflect the benefits associated with onsite renewable energy.

b.) *Exempted Energy Use for Ancillary Building Activities:* Owners of Covered Buildings may choose not to include in their ENERGY STAR Portfolio

Manager profiles sub-metered or separately-metered energy consumption for the following services, systems, or activities:

- i. Broadcast antennas
- ii. Cellular towers
- iii. Electric vehicle charging
- iv. Emergency generators, if not used to power regular building operations
- v. Separately-metered fire pumps

c.) *Direct Data Upload by Utilities:* Owners may authorize utilities to upload whole building energy use data directly into ENERGY STAR Portfolio Manager. Direct data upload does not relieve an Owner of the duty to enter other requested information into ENERGY STAR Portfolio Manager.

d.) *When Whole-Building Energy Use Data Are Unavailable:* When, despite good-faith efforts to obtain whole-building energy use data, such data are still unavailable, buildings may use default energy consumption values for designated occupancy uses. These default values may be determined by the Department and included in Chicago Energy Benchmarking Guidance materials. Upon determining that they are no longer necessary, the Department may disallow the use of default energy use values.

Any use of default energy values shall be noted in ENERGY STAR Portfolio Manager, according to ENERGY STAR Portfolio Manager Guidance.

Rule 4.03

a.) *Property Use Details for Specific Space Uses:* ENERGY STAR Portfolio Manager requires buildings to input property use details for specific space types, based on specific occupancy uses. Buildings must make a good faith effort to obtain property use details requested by ENERGY STAR Portfolio Manager, using all information available to the Owner, including requesting information from tenants.

b.) *When Property Use Details Are Unavailable:* When, despite good-faith efforts to obtain property use details (such as gross floor area, weekly operating hours, percent that can be heated or cooled, etc.), such data are still unavailable, buildings may use the default property use detail values offered by ENERGY STAR Portfolio Manager. Upon determining that they are no longer necessary, the Department may disallow the use of default property use details.

Any use of default property use details shall be noted in ENERGY STAR Portfolio Manager, according to ENERGY STAR Portfolio Manager Guidance.

Rule 4.04

a.) *Water usage data:* If a covered building's water usage data is made public by the Commissioner as provided in Section 18-14-101.4 (b) of the Ordinance, the owner of a covered building may voluntarily include water usage data of the building in the building's benchmarking or reported

benchmarking information. The owner of a covered building is not required to track the building's water usage data.

b.) *Requesting non-disclosure of water data:* The owner of a covered building may request the Commissioner not to publicly disclose the building's water usage data. The request shall be made to the Commissioner in writing, in electronic or paper form, specifying the building's Chicago Energy Benchmarking Identification Number, and such other relevant information as reasonably requested by the Commissioner.

## **SECTION V. Energy Performance Rating**

Rule 5.01 *Energy performance ratings:* The Commissioner shall assign energy performance ratings to covered buildings as provided in Section 18-14-102.3(c) of the Ordinance. In addition, pursuant to Section 18-14-102.3(c)(5) of the Ordinance, the Commissioner may issue a rating of four stars to any covered building which has obtained an ENERGY STAR certification from the US Environmental Protection Agency.

Rule 5.02 *Half a star designation:* The Commissioner may assign an additional half a star designation to covered buildings, as follows:

(1) An additional half a star rating is assigned to a covered building that is eligible for a three star designation and which has an energy performance score of 71 or more.

(2) An additional half a star rating is assigned to a covered building that is eligible for a two star designation and which has an energy performance score of 51 or more.

(3) An additional half a star rating is assigned to a covered building that is eligible for a one star designation and which has an energy performance score of 31 or more.

Rule 5.03 *Energy performance rating for covered building with no energy performance score:* The Commissioner shall assign energy performance rating for covered buildings with no energy performance score based on the building's Energy Use Intensity ("EUI") as compared to the National Peer Dataset, as follows:

(1) A rating of four stars shall be assigned to: (i) a covered building whose EUI is at or lower than the 25 percentile of the National Peer Dataset, or (ii) a covered building whose EUI is between higher than the 25<sup>th</sup> and lower than the 50<sup>th</sup> percentile of the National Peer Dataset and which has shown a total of 10 percent improvement in its EUI in the previous two consecutive years.

(2) A rating of three stars shall be assigned to: (i) a covered building whose

EUI is between higher than the 25<sup>th</sup> and lower than the 50<sup>th</sup> percentile of the National Peer Dataset, or (ii) a covered building whose EUI is between higher than the 50<sup>th</sup> and lower than the 75<sup>th</sup> percentile of the National Peer Dataset and which has shown a total of 10 percent improvement in its EUI in the previous two consecutive years.

(3) A rating of two stars shall be assigned to: (i) a covered building whose EUI is between higher than the 50<sup>th</sup> and lower than the 75<sup>th</sup> percentile of the National Peer Dataset, or (ii) a covered building whose EUI is higher than the 75<sup>th</sup> percentile of the National Peer Dataset and which has shown a total of 10 percent improvement in its EUI in the previous two consecutive years.

(4) A rating of one star shall be assigned to a covered building whose EUI is higher than the 75<sup>th</sup> percentile of the National Peer Dataset.

(5) A rating of zero star shall be assigned to a covered building whose reported benchmarking information is not timely submitted in violation of the Ordinance.

#### Rule 5.04

*Energy rating card:* The Commissioner shall provide energy rating card to covered buildings as provided in Section 18-14-102.3(d) of the Ordinance. The dimensions of the energy rating card shall be 17 inches in width and 11 inches in height, and shall otherwise be in compliance with the sample layout provided in the City of Chicago Energy Rating Website. Energy rating cards shall be displayed as provided in Section 18-14-102.3(e) of the Ordinance, including, but not limited to, in one of the following locations:

(1) On or near the main entrance of the covered building;

(2) Within an elevator bank, if used by a majority of occupants and visitors of the covered building;

(3) In the lobby of the covered building, if visible to the general public and to visitors prior to or upon entering the building; or

(4) Any other location in which the majority of the occupants and visitors of the building would see the card upon entering the building.

The Commissioner shall send the energy rating card of a covered building to the Owner of such building by the United States Postal Service address available with the Department for such Owner. The Commissioner shall also make the rating of the covered building available online at City of Chicago Energy Rating Website.

#### Rule 5.05

*Adjusting Energy Performance Score thresholds:* The Commissioner may adjust the energy performance score thresholds for the energy performance rating system to ensure the energy performance ratings continue to reflect changing energy efficiency standards by the US Environmental Protection

Agency and other best practices.

## **SECTION VI. Data Verification Requirements**

### **Rule 6.01**

a.) *General*: Pursuant to Section 18-14-102.2, every three years (beginning with the first year in which a building is required to benchmark and report), Covered Buildings must ensure that reported benchmarking information is verified by a Licensed Professional. As defined by Section 18-13-101.3, Licensed Professional means a professional engineer or a registered architect licensed in the State of Illinois, or another trained individual as prescribed by rule.

b.) *Recognition of Licensed Professionals*: In addition to professional engineers or registered architects licensed in the State of Illinois, the Department may also recognize as Licensed Professionals individual credential holders and successful graduates of training programs that have been evaluated and recognized by the Department. Licensed Professionals, as identified by the City of Chicago, may or may not be recognized by other organizations for other Data Verification or building certification purposes.

### **Rule 6.02**

a.) *Criteria for Licensed Professional Training Programs and Credentials*: Licensed Professional training programs and other credentials may be evaluated by the Department according to the following criteria:

- i. Demonstrates trained individuals' proficiency in building energy benchmarking and familiarity with ENERGY STAR Portfolio Manager;
- ii. Demonstrates trained individuals' working knowledge of energy-efficient operations, measures and technology;
- iii. Provides opportunities for ongoing skill maintenance or re-training as technologies, tools, and practices evolve;
- iv. Provides a means of tracking graduates or credentialed individuals by name and with a unique identifier (such as a license, identification, or credential number); and
- v. Makes training materials and records available for review by the Department or its designee and is found to be in compliance with the preceding criteria.

b.) *Review and Recognition of Licensed Professional Training Programs and Credentials*: The Department may review requests for consideration of Licensed Professional training programs and credentials. Training programs and credentials that the Department finds to meet criteria specified in Rule 6.02a shall be recognized by the City of Chicago. Successful graduates of recognized training programs and holders of recognized credentials shall be eligible to conduct Data Verification.

c.) *Recognized Training Programs and Credentials*: The Department shall publish a list of recognized training programs and credentials. Recognition of a training program or credential may be revoked if the Department finds



that the training program or credential no longer meets the criteria in Rule 6.02.a.

As of the time of promulgation of these rules, the Department recognizes the following Licensed Professional training programs and credentials:

- i. State of Illinois: Professional Engineer
- ii. State of Illinois: Architect
- iii. Midwest Energy Efficiency Alliance: Building Operator Certification (BOC)
- iv. City Colleges of Chicago: Building Energy Technology (BET) Certification
- v. ASHRAE: Building Energy Assessment Professional (BEAP)
- vi. Association of Energy Engineers: Certified Energy manager (CEM) Certification
- vii. Facilities Engineering Technology Energy Conservation Course (FET 220) - Offered jointly by IUOE Local 399 and Triton College

Additional programs recognized by the Department and posted to the City of Chicago Energy Benchmarking Website

#### Rule 6.03

*Recognition of Data Verification that Resulted in ENERGY STAR Building Certification:* The Department will also recognize as fulfilling the Data Verification requirement the Owners of Covered Buildings that achieved ENERGY STAR building certification through the US Environmental Protection Agency, provided that the certified property and energy use data include at least six consecutive months of the calendar year for which Data Verification was required by the Ordinance.

For example, a Covered Building that is required by the Ordinance to verify calendar year 2013 data by June 1, 2014 will have satisfied the Data Verification requirement if the Owner can prove that the Covered Building attained ENERGY STAR certification based on data that covered at least six months of the calendar year January-December 2013.

#### Rule 6.04

*Proof of Data Verification:* Proof of Data Verification shall take the form of the ENERGY STAR Portfolio Manager Data Verification Checklist, an official record of ENERGY STAR Certification from the US Environmental Protection Agency, or any successor report specified by the Department, according to Chicago Energy Benchmarking Guidance. The ENERGY STAR Portfolio Manager Data Verification Checklist must be completed and signed by the Licensed Professional who conducts Data Verification for each Covered Building.

A Licensed Professional shall include on the Data Verification Checklist his or her name, email address, mailing address, recognized training program or credential, and any relevant unique identifiers (such as license or certificate numbers), as well as the date on which Data Verification took place.

Licensed Professionals are not required to conduct a site visit or evaluate

the Indoor Environmental Standards included in the Data Verification Checklist, including ASHRAE Standard 62, ASHRAE Standard 55, and IESNA Lighting Handbook, though Covered Buildings are encouraged to pursue these standards.

Pursuant to Section 18-14-102.2, the Owner of a Covered Building shall produce the signed Data Verification Checklist for the most recent year in which verification of reported benchmarking information was required, upon a written request by the commissioner.

Rule 6.05 *Indicating That Data Verification Has Been Conducted:* In the years in which data verification is required by the Ordinance, Owners of Covered Buildings shall include in their ENERGY STAR Portfolio Manager profiles the date on which data verification was completed, along with name, email address, mailing address, recognized training program or credential, and any relevant unique identifiers (such as license or certificate numbers), for the Licensed Professional who conducted data verification, according to Chicago Energy Benchmarking Guidance.

## **SECTION VII Reporting Requirements**

Rule 7.01 *Reporting Process:* Each year, the Owner of each Covered Building shall share a subset of the information contained in that building's ENERGY STAR Portfolio Manager profile, pursuant to Section 18-14-102.3 of the Ordinance.

Unless otherwise directed by the Department, Reported Benchmarking Information shall be reported through the Chicago Energy Benchmarking Custom Reporting Template interface in ENERGY STAR Portfolio Manager, according to ENERGY STAR Portfolio Manager Guidance and Chicago Energy Benchmarking Guidance.

Owners of Covered Buildings will access the Custom Reporting Template interface via a publicly-available website link or URL. Upon following the link and logging into ENERGY STAR Portfolio Manager, Owners will find specific reporting instructions. Step-by-step reporting instructions will also be available in ENERGY STAR Portfolio Manager Guidance and Chicago Benchmarking Guidance materials.

Rule 7.02 *Demonstrating Compliance with Data Verification Requirement:* In the years in which Data Verification is required of Covered Buildings, those buildings shall affirm that the Data Verification requirement has been fulfilled, using ENERGY STAR Portfolio Manager, according to Chicago Energy Benchmarking Guidance.

Rule 7.03 *Proof of Reporting:* Upon submitting reported benchmarking information through the Chicago Energy Benchmarking Custom Reporting Template, Owners will receive a confirmation email from the US Environmental Protection Agency, which shall serve as proof-of-submission.

Rule 7.04 *Public Disclosure of Individual Building Information:* Section 18-14-102.3 of the Ordinance allows for public disclosure of Reported Benchmarking Information.

The Department may choose to make specific reported benchmarking information available to the public through the City of Chicago Energy Benchmarking Website, the City of Chicago Data Portal, or other communication vehicles.

Pursuant to Section 18-14-102.3 of the Ordinance, to the extent allowable under local law, no individually-attributable reported benchmarking information from the first year in which a building is required to benchmark shall be made public.

Rule 7.05 *Obligation to Correct Inaccurate Data:* If a Covered Building Owner learns that any reported benchmarking information is inaccurate, the building's ENERGY STAR Portfolio Manager profile must be amended and re-reported according to the process described in Rule 7.01 within 30 days of learning of the inaccuracy.

## **SECTION VIII. Retention of Records**

Rule 8.01 *Retention of Energy Records:* The Owner of each Covered Building shall retain documentation of all building data entered into or produced by ENERGY STAR Portfolio Manager for a period of no less than three years from the date by which benchmarking of that data was required.

Benchmarking documentation shall include:

- i. Completed Data Verification Checklist, signed by a Licensed Professional for the year data verification is required, and/or an official record of ENERGY STAR Certification from the US Environmental Protection Agency;
- ii. Confirmation email from the US Environmental Protection Agency containing proof-of-submission;
- iii. Back-up information on energy use inputs, including, but not limited to, energy bills, calculations, and correspondence demonstrating good faith efforts to obtain actual energy data, property use details, and other data requested by ENERGY STAR Portfolio Manager; and
- iv. A copy of energy data entered into ENERGY STAR Portfolio Manager.

## **SECTION IX Energy Performance Rating and Score Disclosure**

Rule 9.01 A covered building owner shall comply with the disclosure requirement

provided in Section 18-14-102.3(f)(1) of the Ordinance (“Transactional Disclosure”) and the disclosure requirement provided in Section 18-14-102.3(f)(2) of the Ordinance (“Advertisement Disclosure”).

- Rule 9.02                      Transactional Disclosure:
- (a) Transactional Disclosure requirement may be complied with by disclosing a covered building’s ENERGY STAR score from the US Environmental Protection Agency in a database maintained by a national commercial real estate service provider, including, but not limited to, the database maintained by CoStar Group, Inc., as determined by the Commissioner.
- (b) Except as otherwise provided in Rule 9.02(a), transactional disclosure shall be in writing, in electronic or paper form, and shall be signed, electronically or on paper, and attested to by the Owner of the covered building.

**SECTION X.            Exemptions and Exceptions**

- Rule 10.01                      *General:* There are several exemptions and exceptions to the Ordinance, as detailed below. To apply for an exemption or exception, the Owner of a Covered Building must submit a written request and supporting information through the change of building designation process described in Rule 1.06.
- Rule 10.02                      *Exemptions from Benchmarking Requirements:* Section 18-14-102.1 of the Ordinance describes specific exemptions to the benchmarking requirement, based on financial distress, low occupancy, new construction, and change of ownership.
- Rule 10.03                      *Exceptions to Data Verification Requirement:* Section 18-14-102.2 of the Ordinance, describes specific exceptions to the Data Verification requirement, based on undue financial hardship.
- Rule 10.04                      *Exceptions to Benchmarking Public Disclosure:* Section 18-14-102.3 of the Ordinance describes specific exceptions to public disclosure, based on occupancy use.
- Rule 10.05                      *Exception to Energy Performance Rating Designation:* Section 18-14-102.3(c)(3) of the Ordinance exempts from energy performance rating covered buildings that: (i) are exempt from benchmarking requirement; (ii) do not receive an energy performance score or EUI from the benchmarking tool for technical reasons acceptable to the Commissioner; or (iii) are unable to make energy efficiency improvements due to the building’s infrastructure limitations, including, but not limited to, the covered building’s inability to update equipment due to limited space, or other technical reasons acceptable by the Commissioner.

Possible documentation required to receive this exemption, includes, but is not limited to:

(1) Energy audit report stamped by a third party licensed professional showing that no additional energy improvements are possible; or

(2) Energy report stamped by a third party licensed professional showing that infrastructure limitations prevent additional energy upgrades to be made to the covered building.

(3) Energy efficiency report from an energy utility company or its representative specifying that the covered building is not eligible for utility-provided rebates or incentives for additional energy improvements.

Documentation shall be submitted to the Department on the standard form provided on the City of Chicago Energy Rating Website.

Rule 10.06

*Exception to Energy Performance Rating Disclosure:* Section 18-14-102.3 of Ordinance exempts from energy performance rating disclosure: (i) covered buildings that are subject to utility costs disclosure requirements and exceptions provided in Chapter 5-16 of the Municipal Code of Chicago; and (ii) covered buildings that are exempt from benchmarking requirements as provided in Section 18-14-102.1(c) of the Ordinance. If a covered building is exempted from the energy performance rating disclosure because the building is subject to utility costs disclosure requirements in Chapter 5-16 of the Municipal Code of Chicago, the Commissioner may request the owner of such building to provide copy of its most recent utility costs disclosure.

## ARTICLE II

### SECTION XI. Appeal Process

Rule 11.01

*Building Owner Request for Hearing:* If a request for change in a building's covered status or other designation is denied after a change of building designation request has been made pursuant to Rule 1.06, the Owner of the building, within ten days of the issuance of a notice of the denial, may make a written demand upon the Commissioner for a hearing. Upon receipt of a timely written demand for a hearing, the Commissioner shall within 30 days conduct a hearing.

If at such a hearing the owner establishes through competent evidence that the denial was based upon incorrect findings, the Commissioner shall correct the designation of the building. If upon such a hearing the designation is found to have been based upon correct findings, the designation shall become final. The Commissioner's determination shall be

final and may be appealed in the manner provided by law.

## **SECTION XII. Enforcement**

- Rule 12.01 a.) *Determination of Compliance:* The Commissioner is authorized to determine whether any or all persons subject to the Ordinance have complied with the requirements of the Ordinance as set forth in Chapter 18-14.
- Rule 12.02 a.) *Requests for Compliance:* If the requirements of the Ordinance have not been met, the Commissioner may issue a request for compliance in the form of a Notice to Correct, giving any and all persons subject to the Ordinance 30 days to come into compliance.
- Rule 12.03 a.) *Violations:* If any person subject to the Ordinance fails to comply with the requirements of the Ordinance, the Commissioner may issue a notice of violation, according to Section 18-14-101.5(b).

## APPENDIX A

### CHAPTER 18-14 BUILDING ENERGY USE BENCHMARKING

- 18-14-101 General.
- 18-14-101.1 Title.
- 18-14-101.2 Scope.
- 18-14-101.3 Definitions.
- 18-14-101.4 Solicitation of compliance information and water usage data.
- 18-14-101.5 Enforcement.
- 18-14-102 Energy use benchmarking, verification, and disclosure requirements.
- 18-14-102.1 Benchmarking.
- 18-14-102.2 Data verification.
- 18-14-102.3 Disclosure and rating.

#### **18-14-101 General.**

##### **18-14-101.1 Title.**

This Chapter 18-4 of Title 18 shall be known as the Building Energy Use Benchmarking Ordinance of the City of Chicago, and shall be cited as such. It is referred to herein as “this chapter”.

(Added Coun. J. 9-11-13, p. 60628, § 1)

##### **18-14-101.2 Scope.**

This chapter applies to all covered buildings.

(Added Coun. J. 9-11-13, p. 60628, § 1)

##### **18-14-101.3 Definitions.**

For purposes of this chapter the following definitions shall apply:

“Benchmark” means to track and input a building's energy consumption data, water usage data and other relevant building information for 12 consecutive months, as required by the benchmarking tool, to quantify the building's energy use.

“Benchmarking tool” means the website-based software, commonly known as “Energy Star Portfolio Manager”, developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy use of buildings nationwide. This term also applies to any successor system thereto, including any change or addition made to such tool by the United States Environmental Protection Agency.

“Building” means a structure, or part thereof, enclosing any use or occupancy.

“Certificate of occupancy” means the certificate issued by the zoning administrator or the building commissioner allowing building occupancy or use.

“Commissioner” means the city's commissioner of business affairs and consumer protection.

“Covered building” means any Group 1 covered building or Group 2 covered building, as defined by this chapter. The term “covered building” does not include any building with more than 10 percent occupancy use classified as Class D open air assembly units, Class G industrial units, Class H storage units, Class I hazardous use units, or Class J miscellaneous buildings and structures, as defined by Chapter 13-56.

“Data center” means a space specifically designed and equipped to meet the needs of high density computing equipment such as server racks, used for data storage and processing, as defined by the benchmarking tool.

“Energy performance rating” means an energy performance star designation that the commissioner assigns to a covered building pursuant to the energy performance rating system.

“Energy performance rating system” means a system for rating and classifying covered buildings' energy performance scores or, if a covered building does not receive an energy performance score from the benchmarking tool, its EUI. The system may also include the rating of covered buildings' energy performance improvement over time.

“Energy performance score” means the 1 to 100 numerical score produced by the benchmarking tool, also known as Energy Star score, or any successor score thereto. The energy performance score assesses a building's energy performance relative to similar buildings, based on source energy use, operating characteristics, and geographical location.

“Energy use intensity” or “EUI” means a numeric value calculated by the benchmarking tool that represents the energy consumed by a building relative to its size.

“Group 1 covered building” means any building or group of buildings that have the same property identification or index number (PIN) or, with regard to condominium buildings, any building in which the first seven digits of the property identification or index number (PIN) of the units are the same, containing 250,000 or more gross square feet, as identified by the commissioner.

“Group 2 covered building” means any building or group of buildings that have the same property identification or index number (PIN) or, with regard to condominium buildings, any building in which the first seven digits of the property identification or index number (PIN) of the units are the same, containing 50,000 or more gross square feet but less than 250,000 gross square feet, as identified by the commissioner.

“Gross square feet” means the total number of square feet measured between the exterior surfaces of the enclosing fixed walls of a building. The term “gross square feet” includes vent shafts, elevator shafts, flues, pipe shafts, vertical ducts, stairwells, light wells, basement space, mechanical or electrical rooms, and interior parking.

“Licensed professional” means a professional engineer or a registered architect licensed in the State of Illinois, or another trained individual as prescribed by rule.

“Owner” has the meaning ascribed to the term in Section 13-4-010.

“Reported benchmarking information” means descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool related to the building's energy consumption, water usage and efficiency, as prescribed by rule. Reported benchmarking information includes, but is not limited to, the building identification number, address, square footage, energy performance score, energy use intensity, and annual greenhouse gas emissions, and water usage.

“Residential occupancy” means any building occupancy use classified as any combination of Class A residential units, as defined by Chapter 13-56.

(Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1)

#### **18-14-101.4 Solicitation of compliance information and water usage data.**

(a) (1) Within 30 days of a request by the building owner, each tenant of a unit in a covered building shall provide all information that cannot otherwise be acquired by the building owner and that is necessary for the building owner to comply with the requirements of this chapter.

(2) Any owner of a covered building shall request such information no later than March 1 of the years in which benchmarking is required by Section 18-14-102.1. If the



owner of a covered building receives notice that a tenant intends to vacate a unit which is subject to the requirements of this subsection, the owner shall request the information specified in this subsection within 10 days of such notice, and the tenant shall provide such information within 30 days of the request.

(3) The failure of any tenant to provide the information required under this subsection to the owner of a covered building shall not relieve such owner of the obligation to benchmark the building as provided in Section 18-14-102.1, using all information otherwise available to the owner.

(4) Failure of any tenant to provide the information required under this subsection to the owner of a covered building shall create a rebuttable presumption that the owner, tenant, or both have not complied with the time limits specified in this section.

(5) If a tenant of a unit in a covered building fails to provide information to the owner of the building as provided in this subsection, the owner shall be considered to be in compliance with Section 18-14-102.1 with respect to the building if: (1) the owner proves that the owner has requested the tenant to provide such information as specified in this subsection; and (2) the owner has benchmarked the building as provided in Section 18-14-102.1, using all information otherwise available to the owner.

(b) The commissioner of water management may transmit water usage information for covered buildings to the commissioner. Except for covered buildings whose owners submit a request to the commissioner, in a form and manner provided by rule, that the buildings' water usage data not to be made public, the commissioner is authorized to make such water usage information readily available to the public. Notwithstanding any other provision of this chapter to the contrary, if the commissioner makes a covered building's water usage information readily available to the public as provided in this subsection, the covered building owner may, at the owner's option, decide to include such water usage data in the covered building's benchmark or reported benchmarking information but the covered building owner is not required to do so. (Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1)

#### **18-14-101.5 Enforcement.**

(a) The commissioner is authorized to enforce this chapter. The commissioner is also authorized to adopt rules and regulations for the proper administration and enforcement of this chapter.

(b) Any person who violates this chapter may be subject to a fine of up to \$100.00 for the first violation, and an additional fine of up to \$25.00 for each day that the violation continues.

(Added Coun. J. 9-11-13, p. 60628, § 1)

#### **18-14-102 Energy use benchmarking, verification, and disclosure requirements.**

##### **18-14-102.1 Benchmarking.**

(a) No later than June 1, 2014, and no later than June 1st each year thereafter, the owner of any Group 1 covered building shall benchmark such building for the previous calendar year; provided, however, the owner of any Group 1 covered building with 10 percent or more residential occupancy shall benchmark such building for the previous calendar year no later than June 1, 2015, and no later than June 1st each year thereafter.

(b) No later than June 1, 2015, and no later than June 1st each year thereafter, the owner of any Group 2 covered building shall benchmark such building for the previous calendar year; provided, however, the owner of any Group 2 covered building with 10 percent or more residential occupancy shall benchmark such building for the previous calendar year no later than June 1, 2016, and no later than June 1st each year thereafter.

(c) The owner of any covered building shall retain all information tracked and input into the benchmarking tool for a minimum of three years beyond the date on which benchmarking was required.

**Exception:** The commissioner may exempt from the benchmarking requirement the owner of a covered building that submits documentation, in a form prescribed by rule, establishing any of the following:

(i) The building is presently experiencing qualifying financial distress, as defined by any of the following: (1) the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages, (2) the building is controlled by a court appointed receiver, or (3) the building has been acquired by a deed in lieu of foreclosure; or

(ii) The building had average physical occupancy of less than 50 percent throughout the calendar year for which benchmarking is required; or

(iii) The building is a new construction and the building's certificate of occupancy was issued during the calendar year for which benchmarking is required; or

(iv) The building had a change of ownership in the calendar year for which benchmarking is required.

(Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1)

### **18-14-102.2 Data verification.**

Prior to the first benchmarking deadline prescribed by Section 18-14-102.1, and prior to each third benchmarking deadline thereafter, the owner of a covered building shall ensure that reported benchmarking information for that year is verified by a licensed professional. Such verification shall be in a form of a stamped and signed statement by a licensed professional attesting to the accuracy of the information. The owner of a covered building shall produce such statement for the most recent year in which verification of reported benchmarking information was required, in a form prescribed by rule, upon a written request by the commissioner.

Exception: The commissioner may exempt from the verification requirement the owner of a covered building that submits documentation, in a form prescribed by rule, establishing that compliance with this section will cause undue financial hardship. If no-cost or low-cost verification options are available, the commissioner may suggest that the covered building use such alternative options.

(Added Coun. J. 9-11-13, p. 60628, § 1)

### **18-14-102.3 Disclosure and rating.**

(a) In accordance with the schedule prescribed by Section 18-14-102.1, the owner of any covered building shall submit reported benchmarking information for the previous calendar year, using the benchmarking tool, in a manner prescribed by the commissioner.

(b) The commissioner and the chief sustainability officer shall prepare and submit an annual report to the mayor and the city council reviewing and evaluating energy efficiency in covered buildings, including summary statistics on the most recent reported energy benchmarking information and a discussion of energy efficiency trends, cost savings, and job creation effects resulting from energy efficiency improvements.

(c) (1) The commissioner shall establish and implement an energy performance rating system that assigns stars to covered buildings based on such buildings' energy performance scores. Beginning in calendar year 2019, the commissioner shall annually, after covered buildings have submitted their reported benchmarking information as provided in 18-14-102.3, assign a rating to each covered building, as follows:

(i) A rating of four stars shall be assigned to those covered buildings whose energy performance scores are between 81 and 100, inclusive, or whose energy

performance scores are between 61 and 80, inclusive, and which have shown a total of 10-point improvement in their energy performance scores in the previous two consecutive calendar years;

(ii) A rating of three stars shall be assigned to those covered buildings whose energy performance scores are between 61 and 80, inclusive, or whose energy performance scores are between 41 and 60, inclusive, and which have shown a total of 10-point improvement in their energy performance scores in the previous two consecutive calendar years;

(iii) A rating of two stars shall be assigned to those covered buildings whose energy performance scores are between 41 and 60, inclusive, or whose energy performance scores are between 11 and 40, inclusive, and which have shown a total of 10-point improvement in their energy performance scores in the previous two consecutive calendar years;

(iv) A rating of one star shall be assigned to those covered buildings whose energy performance scores are below 40; and

(v) A rating of zero star shall be assigned to those covered buildings whose reported benchmarking information is not timely submitted in violation of this chapter.

(2) In addition to the rating provided in subsection (c)(1) of this section, the commissioner is authorized to assign an additional rating of half a star to a covered building that has an energy performance score which is close to: (i) the highest possible score; or (ii) the next higher rating, as determined by rule promulgated by the commissioner.

(3) No rating shall be assigned to those covered buildings that: (i) are exempt from the benchmarking requirement as provided in 18-14-102.1(c); (ii) do not receive an energy performance score or EUI from the benchmarking tool for technical reasons acceptable to the commissioner; or (iii) are unable to make energy efficiency improvements due to the building's infrastructure limitations or other acceptable technical reasons, as determined by the commissioner after reviewing the application, supporting documentations and other relevant materials submitted by the owner as provided by rule.

(4) For buildings with no energy performance scores, the energy performance rating shall be based on EUI as compared to national medians.

(5) The commissioner is authorized, by rule, to adjust the energy performance score thresholds for the energy performance rating system in order to ensure the energy performance ratings continue to reflect changing energy efficiency standards and best practices.

(d) The commissioner shall provide each covered building with an energy rating card indicating the covered building's current year energy performance rating. Provided, however, no energy rating card shall be provided to covered buildings: (i) that are exempt from public disclosure of reported benchmarking information as provided in 18-14-102.3, (ii) that are exempt from the benchmarking requirement as provided in 18-14-102.1, or (iii) that do not receive an energy performance score or EUI from the benchmarking tool for technical reasons acceptable to the commissioner.

(e) Upon receipt of an energy rating card, a covered building shall conspicuously post the energy rating card so that it is visible to the general public and to visitors prior to or upon entering the covered building. The energy rating card shall not be defaced, marred, camouflaged or hidden from public view.

(f) (1) A covered building owner, or agent thereof, shall not execute an oral or written lease or purchase agreement, contract to lease or sell, or accept any money or other valuable consideration in an application for an oral or written lease or purchase agreement for the entire building or a portion of the building without disclosing to the tenant, applicant or

prospective buyer, in a form and manner prescribed by the commissioner by rule, the covered building's current calendar year energy performance rating or energy performance score. The tenant, applicant, or prospective buyer shall sign a receipt acknowledging that such tenant, applicant, or prospective buyer has received the disclosure required by this subsection.

(2) A covered building owner, or agent thereof, shall include a covered building's current calendar year energy performance rating or energy performance score in any advertisements for sale or lease of the covered building or a portion of the building.

**Exception:** No disclosure shall be required under this subsection (f) if any portion of the covered building is subject to the utility costs disclosure requirements and exceptions provided in Chapter 5-16 of this Code.

**Exception:** No disclosure shall be required under this subsection (f) if the covered building is exempt from the benchmarking requirement as provided in 18-14-102.1(c).

(g) The commissioner is authorized to make reported benchmarking information and energy performance ratings readily available to the public.

**Exception:** Unless a different result is mandated by applicable law, the commissioner shall not make readily available to the public any individually attributable reported benchmarking information from the first calendar year that a covered building is required to benchmark.

**Exception:** Unless a different result is mandated by applicable law, the commissioner shall not make readily available to the public any individually attributable energy performance rating assigned to a covered building until six months after initial ratings are assigned.

**Exception:** Unless a different result is mandated by applicable law, the commissioner shall not make readily available to the public any individually attributable reported benchmarking information or energy performance rating pertaining to a covered building that contains a data center, television studio, or trading floor that together exceed 10 percent of the gross square footage of any such building until the commissioner determines that the benchmarking tool can make adequate adjustments for such facilities. When the commissioner determines that the benchmarking tool can make such adjustments, it shall report such determination to the mayor and the city council.

(Added Coun. J. 9-11-13, p. 60628, § 1; Amend Coun. J. 11-21-17, p. 62508, § 1)