

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

**THE CITY OF CHICAGO
DEPARTMENT OF _____**

AND



(Subject of Agreement)

**BRANDON JOHNSON
MAYOR**

COMMISSIONER

PROFESSIONAL SERVICES AGREEMENT

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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 BUSINESS ASSOCIATE AGREEMENT**
- 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 _____ ("**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 Commissioner of the Department of _____, and any representative authorized in writing to act on the Commissioner's behalf.

"Department" means the City Department of _____.

"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	Business Associate Agreement
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 [REDACTED], 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 [REDACTED] 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 8.

(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.

(b) Chicago Paid Sick Leave Ordinance

Contractor understands that, to the extent that Paid Sick Leave Ordinance, codified at MCC Chapter 6-105, and as may be amended from time to time, applies to its activities, it must comply with the Ordinance.

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 as those italicized terms are defined in the Municipal Code.

(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

CONTRACTOR¹

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:

¹If 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
Aileen Velazquez, 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 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>51st Street Business Association * 220 E. 51st 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>African American Contractors Association – AACA * 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>Angel of God Resource Center, Inc. * 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>Association of Asian Construction Enterprises (AACE) * 712 W. Root Street Chicago, IL 60609 312-595-2010 admin@aacechicago.com www.aacechicago.com Maintains list of certified firms: Yes Provides training for businesses: No</p>
<p>Austin African American Business Networking Assoc. 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>Better Business Bureau of Chicago/Northern Illinois 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>Black Contractors Owners and Executives * 7811 S. Stony Island Ave. Chicago, IL 60649 773-346-5658 773-346-5659 admin@bcoechicago.org www.bcoechicago.org Maintains list of certified firms: No Provides training for businesses: No</p>	<p>Black Contractors United * 12000 S. Marshfield Ave. Calumet Park, IL 60827 708-389-5730 708-389-5735 www.blackcontractorsunited.com Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>BOP Project 5000 NFP 644 E. 79th Street Chicago, IL 60619 773-891-5939 773-304-1903 bopbizcenter@gmail.com Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Business Leadership Council * 230 W. Monroe Street, Ste 2650 Chicago, IL 60606 312-628-7844 312-628-7846 Avis.l@businessleadershipcouncil.org www.businessleadershipcouncil.org Maintains list of certified firms: Yes Provides training for businesses: No</p>

<p>Chatham Business Association Small Business Dev. * 800 E. 78th Street Chicago, IL 60619 773-994-5006 773-855-8905 admin@cbaworks.org www.cbaworks.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Chicago Minority Supplier Development Council Inc. * 105 W. Adams, Suite 2300 Chicago, IL 60603-6233 312-755-8880 312-755-8890 Fax cjordan@chicagomsgdc.org www.chicagomsgdc.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Chicago Urban League * 4510 S. Michigan Ave. Chicago, IL 60653 773-285-5800 jjohnson@chiul.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Chicago Women in Trades (CWIT) 2444 W. 16th Street Chicago, IL 60608 312-942-1444 Jayne Vellinga, Executive Director jvellinga@cwit2.org www.chicagowomenintradess2.org Maintains list of certified firms: No Provides training for businesses: Yes</p>
<p>Contractor Advisors Business Development Corp. * 1507 E. 53rd Street, Suite 906 Chicago, IL. 60615 312-436-0301 info@contractoradvisors.us www.contractoradvisors.us Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Cosmopolitan Chamber of Commerce 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>Council of Black Architecture and Engineering Companies (Formally NOME)* 1 South Wacker, Suite 2650 Chicago, IL 60606 312-960-1239 msutton@infrastructure-eng.com Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Do For Self Community Development Co. * 8659 S. Ingleside Ave., Chicago, IL 60619 773-356-7661 dennis@doforself.org www.doforself.org Maintains list of certified firms: No Provides training for businesses: Yes</p>
<p>Elite Service Disabled Veteran Owned Business Network 420 Lake Cook Rd, Ste 104 Deerfield, IL 60015 847-453-8890 jscifers@scigon.com www.elitesdvob.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Far South Community Development Corporation 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>Federation of Women Contractors * 4210 W. Irving Park Road, Chicago, IL 60641 312-360-1122 info@fwcchicago.com www.fwcchicago.com Maintains list of certified firms: Yes Provides training for businesses: No</p>	<p>Fresh Start Home Community Development Corp. 5168 S. Michigan Avenue, 4N Chicago, IL 60615 773-312-3797 855-270-4175 Info@FreshStartNow.us www.FreshStartNow.us Maintains list of certified firms: Yes Provides training for businesses: Yes</p>

<p>Greater Southwest Development Corporation 2601 W. 63rd Street Chicago, IL 60629 773-362-3373 c.james@greatersouthwest.org www.greatersouthwest.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Hispanic American Construction Industry Association (HACIA) * 650 W. Lake St., Unit 415 Chicago, IL 60661 312-575-0389 312-575-0389 perez@haciaworks.org www.haciaworks.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Illinois State Black Chamber of Commerce * 411 Hamilton Blvd., Suite 1404 Peoria, Illinois 61602 309-740-4430 309-672-1379 finance@ILBCC.org www.ilbcc.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Illinois Hispanic Chamber of Commerce * 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>JLM Business Development Center* 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>LGBT Chamber of Commerce of Illinois * 3179 N. Clark St., 2nd Floor Chicago, IL 60657 773-303-0167 773-303-0168 admin@lgbtcc.com www.lgbtcc.com Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Native American Chamber of Commerce of Illinois 100 N. Riverside Plaza, Suite 1670 Chicago, IL 60606 630-926-1700 info@nacc-il.org www.nacc-il.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>NDIGO Foundation 329 W. 18th Street, Ste 613 Chicago, IL 60616 312-264-6272 hhartman@ndigo.com www.ndigo.com Maintains list of certified firms: No Provides training for businesses: Yes</p>
<p>Rainbow/PUSH Coalition * 930 E. 50th Street Chicago, IL 60615 773-255-9067 773-256-2768 jmitchell@rainbowpush.org www.rainbowpush.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>RTW Veteran Center * 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>South Shore Chamber, Inc. * 1750 E. 71st Street Chicago, IL 60649-2000 773-955- 9508 773-955-9554 Tonya Trice, Executive Director info@southshorechamberinc.org www.southshorechamberinc.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Sustainable Options for Urban Living, Inc. (SOUL) 11603 S. Throop Street Chicago, IL 60643 773-250-1770 Ext 702 773 250-1770 Cyndi@soul-program.com www.soul-program.com Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>The Monroe Foundation 1547 South Wolf Road Hillside, Illinois 60162 773-315-9720 omonroe@themonroefoundation.org www.themonroefoundation.org Maintains list of certified firms: No Provides training for businesses: Yes</p>	<p>Turn 2 Growth 15475 S. Park South Holland, IL 60473 708-913-4700 info@turn2growth.org www.turn2growth.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>US Minority Contractors Association, Inc. * 1250 S. Grove Ave. Suite 200 Barrington, IL 60010 847-352-5010 847-382-1787 larry.bullock@usminoritycontractors.org www.USMinorityContractors.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>Women’s Business Development Center * 8 S. Michigan Ave., Suite 400 Chicago, IL 60603 312-853-3477x220 312-853-0145 edimenco@wbdc.org www.wbdc.org Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Women Construction Owners & Executives (WCOE) * Chicago Caucus 308 Circle Avenue Forest Park, IL 60130 708-366-1250 mkm@mkmservices.com www.wcoeusa.org 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:

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

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:

F. Negotiating and signing labor agreements:

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?

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

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?

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.

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:¹ ____%

Total Participation % _____

2. Name of MBE/WBE: _____

Address: _____

Contact Person: _____

¹ 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 (%)
Total Direct MBE Participation		

2. MBE Indirect Participation

MBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
Total Indirect MBE Participation		

B. WBE Proposal (Direct & Indirect)

1. WBE Direct Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
Total Direct WBE Participation		

2. WBE Indirect Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
Total Indirect WBE Participation		

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 COMPLETED CERTIFICATE OF INSURANCE HERE.

EXHIBIT 6

Current as of: March 10, 2023

Updated Officers: April 3, 2023

BUSINESS ASSOCIATE AGREEMENT

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

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

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

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

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

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

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

Ruth Abarca-Compton
HIPAA Privacy Officer
312-745-2774

Hipaaprivacyofficer@cityofchicago.org

Bruce Coffing
HIPAA Security Officer
312-744-2461

Hipaasecurityofficer@cityofchicago.org

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

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

5. Minimum Necessary. Business Associate shall use, disclose, or request only the minimum necessary PHI necessary to accomplish the intended purpose of the use, disclosure, or

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

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

7. Applicability of Business Associate Agreement to Subcontractors and Agents. Business Associate must ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information, by entering into a contract or other arrangement that complies with HIPAA. An agent or subcontractor of a Business Associate is not permitted to use or disclose PHI in a manner that would not be permissible if done by the Business Associate. Business Associate will ensure that its subcontractors and agents to which Business Associate is permitted by this Agreement or in writing by the City to disclose PHI agree to implement reasonable and appropriate safeguards to protect PHI. Business Associate will obtain reasonable assurances from any subcontractors and agents to which Business Associate discloses PHI that the subcontractor or agent will hold PHI in confidence and further use or disclose PHI only for the purpose for which Business Associate disclosed PHI to the subcontractor or agent or as required by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) until Business Associate has completed the return or destruction (in accordance with the US Department of Health and Human Services’ Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals) of all of the PHI provided by City to Business Associate, or created or received by Business Associate on behalf of City, and
- (b) to the extent that Business Associate retains any PHI.

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

(1) return all PHI received from the City, or created, maintained, or received by Business Associate on behalf of the City, which the Business Associate still maintains in any form, to the City or

(2) destroy it, at the City's option (in accordance with the US Department of Health and Human Services' Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals).

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

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

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

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

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

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

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

[Insert business associate's name]

By:

By:

Print Name:

Print Name:

Title:

Title:

Date:

Date:

EXHIBIT 7
LIST OF KEY PERSONNEL

Name/Title:

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 <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/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 stored 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/city/en/depts/dgs/supp_info/is_policy.html ("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.