

**PUBLIC BUILDING COMMISSION OF CHICAGO
ADDENDUM #2
REQUEST FOR PROPOSALS FOR
PLAYGROUND EQUIPMENT – PS1921**

Date: Friday, June 15, 2012

Notice of Changes in the RFP Documents:

The following changes are hereby made in the Request for Proposals documents, and insofar as the prior Request for Proposals documents are inconsistent herewith, the changes mentioned herein shall govern.

Change 1:

IV. INSTRUCTIONS FOR PREPARING AND SUBMITTING SUBMISSIONS, ARTICLE 1. SUBMITTAL REQUIREMENTS, Section 1.02 Format, Item 1. Delete in its entirety and replace with the following new item(s):

1. Submittals should be prepared on standard 8 ½" x 11" letter size materials, and bound on the long side. Expensive papers and bindings are discouraged since no materials will be returned. Sections shall be separated by labeled tabs or a page divider and organized in accordance with these Submittal Requirements.

1.a. Each Respondent's submittal shall be packaged and labeled in the following manner:

1.a.i. One (1) original with original signatures, one (1) unbound copy and five (5) CD-ROM copies which contain all required items included in the Request for Proposal with the exception of Exhibit 1 - PRICING FOR PLAY STRUCTURES (Equipment List for Small, Medium and Large Plans), Exhibit 8 – VOLUME DISCOUNT MATRIX FORM, Specimen color samples, Maintenance kit and Inspection certification check list.

- The submission described in 1.a.i. must be labeled in the following manner:

**RFP for Playground Equipment – PS1921
[RESPONDENT'S NAME]**

1.a.ii. All submittals described in 1.a.i. must include the following:

- Exhibit 1A – Play Structures Small Plan Interrogatory, Sample Small Plan and Small Plan Playground Specifications
- Exhibit 1B – Play Structures Medium Plan Interrogatory, Sample Medium Plan and Medium Plan Playground Specifications
- Exhibit 1C – Play Structures Large Plan Interrogatory, Sample Large Plan and Large Plan Playground Specifications

1.a.iii. Submit one (1) separately sealed container which includes the following:

- Specimen color samples
- Maintenance kit
- Inspection certification check list.

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- The submission described in 1.a.iii. must be labeled in the following manner:

RFP for Playground Equipment – PS1921
[RESPONDENT'S NAME]
Maintenance Kit and Samples

- 1.a.iv. **Submit five (5) separately sealed envelope which includes the following:**
- Exhibit 1 Pricing for Play Structures – Equipment List for Small Plan
 - Exhibit 1 Pricing for Play Structures – Equipment List for Medium Plan
 - Exhibit 1 Pricing for Play Structures – Equipment List for Large Plan
- The submission described in 1.a.iv. must be labeled in the following manner:

RFP for Playground Equipment – PS1921
[RESPONDENT'S NAME]
Exhibit 1 – Pricing for Play Structures

- 1.a.v. **Submit five (5) separately sealed envelope which includes the following:**
- Exhibit 8 - VOLUME DISCOUNT MATRIX FORM
- The submission described in 1.a.v. must be labeled in the following manner:

RFP for Playground Equipment – PS1921
[RESPONDENT'S NAME]
Exhibit 8 – Volume Discount Matrix Form

Change 2: IV. INSTRUCTIONS FOR PREPARING AND SUBMITTING SUBMISSIONS, ARTICLE 1. SUBMITTAL REQUIREMENTS, Section 1.03 Contents, Item 7. Pricing a. The proposal price list. Delete the following:

- a. The proposal price list. This will be a list of every piece of equipment and replacement/repair part offered by the Proposer and the price proposed for this RFP.

Change 3: IV. INSTRUCTIONS FOR PREPARING AND SUBMITTING SUBMISSIONS, ARTICLE 1. SUBMITTAL REQUIREMENTS, Section 1.03 Contents, Item 4. Add the following:

4. The catalog used for preparation of the Proposal and the pricing list of every piece of equipment and replacement/repair part offered by the Proposer.

Change 4:

Page 6, I. KEY INFORMATION ABOUT THIS RFP, add the following new item:

Mayor Rahm Emanuel, Chairman
Addendum No.2

Erin Lavin Cabonargi, Executive Director
Friday, June 15, 2012

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8. **CONFIDENTIALITY:** Respondent may designate those portions of the Proposal, which contain trade secrets or other proprietary data, that must remain confidential. If a Respondent includes data that is not to be disclosed to the public for any purpose or used by the PBC except for evaluation purposes, the Respondent must:
- a. Mark the title page as follows: “This RFP proposal includes trade secrets or other proprietary data (“data”) that may not be disclosed outside the PBC and may not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this Proposal. The data subject to this restriction are contained in sheets (insert page numbers or other identification).” The PBC, for purposes of this provision, will include any consultants assisting in the evaluation of Proposals. If, however, a contract is awarded to this Respondent as a result of or in connection with the submission of this data, the PBC has the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the PBC’s right to use information contained in the data if it is obtained from another source without restriction.
 - b. Mark each sheet or data to be restricted with the following legend: “Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this Proposal.”

All submissions are subject to the Freedom of Information Act.

Change 5: Delete the following:

Section V. Evaluation Criteria, Article 2. Evaluation Criteria, 4.2 Criteria for Quality

And replace with the following:

Section V. Evaluation Criteria, Article 2. Evaluation Criteria, 2.2 Criteria for Quality

Change 6: Delete the acronym “MOWD” from each of the following areas:

Under Section V. Instructions for Preparing and Submissions, 1.03 Contents, number 5. (d)
and under Exhibit 1 – Play Structures, number 3.

And replace the “MOWD” acronym in each with the following areas with “MOPD”.

Under Section V. Instructions for Preparing and Submissions, 1.03 Contents, number 5. (d)
and under Exhibit 1 – Play Structures, number 3.

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Change 7: Delete the following and replace with Attachment 1:

1. Page 17 - EXHIBIT 1A – PLAY STRUCTURES – SMALL PLAN
2. Page 22 - EXHIBIT 1B – PLAY STRUCTURES – MEDIUM PLAN
3. Page 27 - EXHIBIT 1C – PLAY STRUCTURES – LARGE PLAN

Change 8: Add Attachment 2 DRAFT FORM OF THE AGREEMENT after Page 51 of 60 of this RFP.

Questions & Answers

Question 1:

Could the Financial Statements be kept confidential? Could we submit them in a sealed envelope marked “confidential” rather than inserting them into the overall proposal and CDs?

Answer 1: Yes. Label the sealed envelope in the following manner:

**RFP for Playground Equipment – PS1921
Name of Respondent
Financial Statements**

Question 2:

Are 7 sets of the Specimen Color Samples and 7 Maintenance Kits required?

Answer 2: See Change 1. a.iii. above.

Question 3:

Should an electronic summary of these items be included on the CD's instead?

Answer 3: No. It will not be necessary.

Question 4:

Does a second copy of the two sealed envelopes need to be included with the unbound copy of the proposal?

Answer 4: See Change 1 above.

Question 5:

Page 22 Item 7a Catalog Pricing – In order to provide pricing on “every piece of playground equipment and replacement/repair parts” it would result in approximately 1000 pages due to our extensive product offering. Can we submit on a DVD, CD, or USB drive?

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Answer 5: The Catalog Pricing may be submitted on CD's, DVDs, or USB flash drives. Please see Change 1.a.i for instructions.

Question 6:

It is not clear to us what those MOPD requirements are and how they apply to playgrounds.

Answer 6: The requirements for MOPD are no different than the requirements for the State of Illinois for accessible playground equipment.

Question 7:

Specific components are listed and drawn for the equipment designs provided for the small, medium and large sample play structures. When providing a drawing to match your request with a different manufactures design there may be differences and with those differences there also might be a different count or name that does not match line for line with your provided equipment lists. How would you like us to provide the listing of components and prices for our drawing when the provided form becomes inapplicable to the design we are submitting?

Answer 7: Prefer to see an itemized list of your specific equipment as shown on your revised plan.

Question 8:

Would you like us to provide a rendered 3-dimensional model off the DWG file in Jpeg or PDF format?

Answer 8: Yes.

Question 9:

Due to the size of the proposal may DVD or USB flash drives be acceptable in lieu of CD-ROMs?

Answer 9: Yes.

END OF ADDENDUM NO. 2

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ATTACHMENT 1

(REVISED EXHIBIT 1A, EXHIBIT 1B AND EXHIBIT 1C FOLLOWS THIS PAGE)

**PUBLIC BUILDING COMMISSION OF CHICAGO
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**EXHIBIT 1A – PLAY STRUCTURES - SMALL PLAN
INTERROGATORY**

REVIEW THE SMALL PLAN PLAYGROUND SPECIFICATIONS (2-PAGES), SAMPLE SMALL PLAN (1-PAGE) AND SMALL PLAN EQUIPMENT LIST (2-PAGES) AND THAT FOLLOW THIS PAGE.

Complete the Small Plan Playground Specifications with the specifications for your Small Plan. Complete the Small Plan Equipment List with the material list for your Small Plan.

PLEASE ANSWER THE FOLLOWING QUESTIONS “YES” or “NO” FOR THIS PLAN. Provide an explanation for each “No” answer.

1. Does each play structure meet all provisions of the USCPSC (US Consumer Product Safety Commission) “Handbook for Public Playground Safety”? **YES** **NO**
2. Does each play structure meet all provisions of the ASTM Standard Consumer Safety Performance Specification for Playground Equipment for Public Use? **YES** **NO**
3. Does each play structure meet all requirements of the Mayor’s Office for People with Disabilities? **YES** **NO**
4. Is the manufacturer of the proposed Playground Equipment IPEMA certified? **YES** **NO**
5. Describe the accessibility features of the proposed design and Playground Equipment under the guidelines of the American with Disabilities Act? **YES** **NO**
6. Describe how support posts are fabricated and the impact on durability and safety, Include diameter, gauge and materials. **YES** **NO**
7. Describe the materials and designs used for fabrication of all fasteners, bolts, nuts, screws, washers, and other hardware assembly of equipment in terms of durability, safety and tamper-resistance. **YES** **NO**
8. Does any proposed Playground Equipment in the proposed plan have a fall height greater than 8 feet? **YES** **NO**
9. Are special tools required for assembly of the proposed Playground Equipment? **YES** **NO**
10. How many sets of tools and special tools are included with the proposed Playground Equipment at no additional charge? **YES** **NO**
11. Are complete installation instructions and maintenance kits provided for all proposed Playground Equipment? **YES** **NO**
12. Does design, installation, maintenance or repair require any special training to preserve warranties? **YES** **NO**
13. Do the support posts in the proposed Playground Equipment have markings to show the installation and safety surface levels? **YES** **NO**
14. What product liability coverage, in dollars, is provided for the proposed Playground Equipment? **YES** **NO**

Mayor Rahm Emanuel, Chairman
Addendum No.2

Erin Lavin Cabonargi, Executive Director
Friday, June 15, 2012

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**EXHIBIT 1B – PLAY STRUCTURES - MEDIUM PLAN
INTERROGATORY**

REVIEW THE MEDIUM PLAN PLAYGROUND SPECIFICATIONS (2-PAGES), SAMPLE MEDIUM PLAN (1-PAGE) AND MEDIUM PLAN EQUIPMENT LIST (2-PAGES) AND THAT FOLLOW THIS PAGE.

Complete the Medium Plan Playground Specifications with the specifications for your Medium Plan. Complete the Medium Plan Equipment List with the material list for your Medium Plan.

PLEASE ANSWER THE FOLLOWING QUESTIONS “YES” or “NO” FOR THIS PLAN. Provide an explanation for each “No” answer.

1. Does each play structure meet all provisions of the USCPSC (US Consumer Product Safety Commission) “Handbook for Public Playground Safety”? **YES** **NO**
2. Does each play structure meet all provisions of the ASTM Standard Consumer Safety Performance Specification for Playground Equipment for Public Use? **YES** **NO**
3. Does each play structure meet all requirements of the Mayor’s Office for People with Disabilities? **YES** **NO**
4. Is the manufacturer of the proposed Playground Equipment IPEMA certified? **YES** **NO**
5. Describe the accessibility features of the proposed design and Playground Equipment under the guidelines of the American with Disabilities Act? **YES** **NO**
6. Describe how support posts are fabricated and the impact on durability and safety, Include diameter, gauge and materials. **YES** **NO**
7. Describe the materials and designs used for fabrication of all fasteners, bolts, nuts, screws, washers, and other hardware assembly of equipment in terms of durability, safety and tamper-resistance. **YES** **NO**
8. Does any proposed Playground Equipment in the proposed plan have a fall height greater than 8 feet? **YES** **NO**
9. Are special tools required for assembly of the proposed Playground Equipment? **YES** **NO**
10. How many sets of tools and special tools are included with the proposed Playground Equipment at no additional charge? **YES** **NO**
11. Are complete installation instructions and maintenance kits provided for all proposed Playground Equipment? **YES** **NO**
12. Does design, installation, maintenance or repair require any special training to preserve warranties? **YES** **NO**
13. Do the support posts in the proposed Playground Equipment have markings to show the installation and safety surface levels? **YES** **NO**
14. What product liability coverage, in dollars, is provided for the proposed Playground Equipment? **YES** **NO**

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**EXHIBIT 1C – PLAY STRUCTURES - LARGE PLAN
INTERROGATORY**

REVIEW THE LARGE PLAN PLAYGROUND SPECIFICATIONS (2-PAGES), SAMPLE LARGE PLAN (1-PAGE) AND LARGE PLAN EQUIPMENT LIST (3-PAGES) AND THAT FOLLOW THIS PAGE.

Complete the Large Plan Playground Specifications with the specifications for your Large Plan. Complete the Large Plan Equipment List with the material list for your Large Plan.

PLEASE ANSWER THE FOLLOWING QUESTIONS “YES” or “NO” FOR THIS PLAN. Provide an explanation for each “No” answer.

1. Does each play structure meet all provisions of the USCPSC (US Consumer Product Safety Commission) “Handbook for Public Playground Safety”? **YES** **NO**
2. Does each play structure meet all provisions of the ASTM Standard Consumer Safety Performance Specification for Playground Equipment for Public Use? **YES** **NO**
3. Does each play structure meet all requirements of the Mayor’s Office for People with Disabilities?
YES **NO**
4. Is the manufacturer of the proposed Playground Equipment IPEMA certified? **YES** **NO**
5. Describe the accessibility features of the proposed design and Playground Equipment under the guidelines of the American with Disabilities Act? **YES** **NO**
6. Describe how support posts are fabricated and the impact on durability and safety, Include diameter, gauge and materials. **YES** **NO**
7. Describe the materials and designs used for fabrication of all fasteners, bolts, nuts, screws, washers, and other hardware assembly of equipment in terms of durability, safety and tamper-resistance.
YES **NO**
8. Does any proposed Playground Equipment in the proposed plan have a fall height greater than 8 feet?
YES **NO**
9. Are special tools required for assembly of the proposed Playground Equipment? **YES** **NO**
10. How many sets of tools and special tools are included with the proposed Playground Equipment at no additional charge? **YES** **NO**
11. Are complete installation instructions and maintenance kits provided for all proposed Playground Equipment?
YES **NO**
12. Does design, installation, maintenance or repair require any special training to preserve warranties?
YES **NO**
13. Do the support posts in the proposed Playground Equipment have markings to show the installation and safety surface levels? **YES** **NO**
14. What product liability coverage, in dollars, is provided for the proposed Playground Equipment?
YES **NO**

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ATTACHMENT 2

(DRAFT FORM OF THE AGREEMENT FOLLOWS THIS PAGE)

DRAFT AGREEMENT

PUBLIC BUILDING COMMISSION OF CHICAGO



**PROFESSIONAL SERVICES AGREEMENT
CONTRACT NUMBER PS1921
WITH
(PROVIDER)
FOR
PLAYGROUND EQUIPMENT AND SERVICES**

**Mayor Rahm Emanuel
Chairman**

**Erin Lavin Cabonargi
Executive Director**

Richard J. Daley Center, Room 200
50 W. Washington Street
Chicago, Illinois 60602
www.pbcchicago.com

DRAFT AGREEMENT

EXECUTION PAGE

PROFESSIONAL SERVICES AGREEMENT FOR

PLAYGROUND EQUIPMENT AND SERVICES

CONTRACT NUMBER PS1921

THIS AGREEMENT for Playground Equipment and Services (the “**Agreement**”) dated as of _____, 2012 but actually executed on the date witnessed, is entered into by and between the **Public Building Commission of Chicago**, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, (the “**Commission**”), and (Provider) (the “**PROVIDER**”).

BACKGROUND INFORMATION

THE COMMISSION requires certain playground equipment and services, described in this **Agreement** and in described in more detail in **Exhibit 1 - Scope of Services** (the “**Services**”), and desires to retain the Provider on the terms and conditions set forth in this Agreement to provide such playground equipment and perform such Services.

THE PROVIDER desires to be so retained by the Commission and represents to the Commission that the Provider has the knowledge, skill, experience and other resources necessary to provide the playground equipment and perform the Services in the manner provided by this Agreement.

THE PROVIDER consulted with the Commission, reviewed this Agreement and took such other actions as the Provider deemed necessary or advisable to familiarize itself with the scope and requirements of the Agreement and presented itself to the Commission as being fully knowledgeable and capable of providing the playground equipment and rendering the Services.

THE COMMISSION relies upon the Provider’s representations in selecting the Provider to provide the playground equipment and the Services.

NOW THEREFORE, The parties agree on the Terms that follow:

DRAFT AGREEMENT

SIGNED on: _____ / _____ / _____

PUBLIC BUILDING COMMISSION OF CHICAGO

Chairman

ATTEST:

Secretary/Assistant Secretary

PROVIDER: (Manufacturer)

BY: _____
Secretary/Assistant Secretary

BY: _____
President/Vice President

AFFIX CORPORATE
SEAL, IF ANY, HERE

County of: _____

State of: _____

Subscribed and sworn to before me by _____ and _____

on behalf of the Provider this _____ day of _____, 20____.

Notary Public

My Commission expires:

(SEAL OF NOTARY)

DRAFT AGREEMENT

PROVIDER: (Manufacturer’s Representative, if any)

BY: _____ BY: _____
Secretary/Assistant Secretary President/Vice President

AFFIX CORPORATE
SEAL, IF ANY, HERE

County of: _____

State of: _____

Subscribed and sworn to before me by _____ and _____

on behalf of the Provider this _____ day of _____, 20____.

Notary Public

My Commission expires:

(SEAL OF NOTARY)

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TERMS AND CONDITIONS

ARTICLE 1. INCORPORATION OF RECITALS AND EXHIBITS

1.1 Recitals

The matters recited above are incorporated in and made a part of the Agreement.

1.2 Incorporation of Exhibits

(a) The following attached **Exhibits** are made a part of this Agreement:

- (i) **EXHIBIT 1 Scope of Services**
- (ii) **EXHIBIT 2 Schedule of Compensation**
- (iii) **EXHIBIT 3 Key Personnel**
- (iv) **EXHIBIT 4 Insurance Requirements and Evidence of Insurance**
- (v) **EXHIBIT 5 Disclosure Affidavit**
- (vi) **EXHIBIT 6 Disclosure of Retained Parties**
- (vii) **EXHIBIT 7 MBE/WBE Special Conditions**

(b) By executing this Agreement, the **Provider** acknowledges that it is familiar with the contents of each of such documents and will comply fully with all applicable portions of them in performing the Services.

ARTICLE 2. DEFINITIONS

2.1 Definitions

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

(a) **Additional Services.** Those services which are within the general scope of Services of this Agreement, but beyond the description of services required under **Section 3.1**, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services require the approval of the **Commission** in a written amendment under **Section 10.3** of this Agreement before the **Provider** is obligated to perform those Additional Services and before the **Commission** becomes obligated to pay for those Additional Services.

(b) **Agreement.** This Agreement for Playground Equipment and Services, between the **Commission** and the **Provider**, including all attached exhibits, schedules and documents and all such exhibits, schedules and documents incorporated by reference, all component parts and all amendments, modifications, or revisions made in accordance with its terms.

(c) **Authorized Commission Representative.** One or more persons designated in writing by the **Executive Director** for the purposes of assisting the **Commission** in managing the Project. As specifically directed by the **Commission**, the Authorized Commission Representative will act on behalf of the **Commission**.

(d) **Commission.** The Public Building Commission of Chicago, a municipal corporation, acting by and through its Chairman, Secretary, Assistant Secretary, **Executive Director**, including the Commission's Authorized Representative, as designated by the Executive Director in writing.

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(e) **Deliverables.** Collectively, all Playground Equipment and the documents described in Article 3 and Exhibit 1 - Scope of Services of this Agreement, in any format (electronic or hard copy) requested by the Commission, including technical specifications, designs, drawings, plans, reports, forms, recommendations, analyses, material lists, minutes, instructions, guidelines, checklists, punch lists, warranties and interpretations, the Provider is required, under this Agreement, to provide to the Commission.

(f) **Designs.** Layouts, specifications and material lists requested by the Commission or a User Agency for specific Task Orders, provided and/or created by the Provider.

(g) **Playground Equipment.** Equipment, components, materials or parts provided under this Agreement.

(h) **Executive Director.** The authorized representative for the Commission.

(i) **Key Personnel.** Those job titles and individuals identified in EXHIBIT 3 - Key Personnel and referred to in Section 3.5 - Personnel of this Agreement, including the Provider's authorized representative.

(j) **Project Data.** Collectively all Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to or by the Provider in connection with a Task Order, this Agreement, the Services and/or Deliverables.

(k) **Provider.** The company or other entity identified in the Agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of the Agreement.

(l) **Repairs.** Ordinary repairs required for Playground Equipment.

(m) **Services.** Collectively, the services, duties, tasks and responsibilities described in Article 3 and EXHIBIT 1 - Scope of Services 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.

(n) **Subconsultant or Subcontractor.** Any person or entity hired or engaged by the Provider to provide any part of the Services required under the terms of this Agreement.

(o) **Task Order.** A Purchase Order, Request for Services or Deliverables under this Agreement issued by the Commission or a specific User Agency.

(p) **User Agency.** A governmental agency or agencies that issued or requested the Commission issue a Task Order under this Agreement.

2.2 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.

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(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.

(g) References to “approved by the **Commission**” or to “approval by the **Commission**” are not intended to and must not be interpreted to absolve the **Provider** from liability due to errors and omissions.

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF THE PROVIDER

3.1 Scope of Services

(a) This professional services agreement between the **Commission** and the **Provider** is for performance of the Services necessary for the design, acquisition, installation and maintenance of Playground Equipment as requested in specific Task Orders. This description of Services is intended to be general in nature and is neither a complete description of the Services nor a limitation on the Services that the **Provider** is to provide under this Agreement.

(b) The **Provider** must provide the Services in accordance with the standards of performance set forth in **Section 3.4**. The Services that the **Provider** must provide include those described in **EXHIBIT 1 - Scope of Services** which is attached to this Agreement and incorporated by reference as if fully set forth here.

(c) The Key Personnel and personnel engaged in performing or knowledgeable of the Services will attend meetings, as required by the **Commission**, per Task Order unless excused by the **Executive Director**. When the **Provider** is required to attend meetings, they will present the Deliverables due, take the minutes and distribute the minutes within 5 days of the meeting.

(d) The **Provider** must notify the **Commission** immediately in the event the **Provider** obtains knowledge of an issue or circumstances which could result in a delay in providing the Deliverables or performing the Services.

3.2 Community Involvement

The **Commission** and the User Agencies may seek community involvement, or development of apprenticeships and mentoring opportunities during the term of this agreement. The **Provider** will be expected to participate in these projects as trainers and mentors.

3.3 Deliverables

(a) In carrying out its Services and as requested by specific Task Orders, the **Provider** must prepare or provide to the **Executive Director** various Deliverables as described in **EXHIBIT 1 - Scope of Services**.

(b) The **Executive Director** may reject Deliverables that fail to comply with the requirements of this Agreement. If the **Executive Director** determines that the **Provider** has failed to comply with the standards set forth in **Section 3.4**, he will notify the **Provider**. If the **Provider** does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the **Executive Director** specifying the failure, then the **Executive Director**, by written notice, may treat the failure as a default of this Agreement under **Section 9.1**.

(c) Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the **Commission** and when

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consented to in advance by the **Executive Director**. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve the **Provider** of its obligations under this Agreement.

3.4 Price Reduction

- a) The volume discount will be applied per invoice in each 12-month period, utilizing the date of the task orders. When an invoice causes the **Commission's** or **User Agency's** aggregate yearly purchases to cross a discount threshold, the increased discount rate will be applied to that portion of the invoice over the threshold, not the entire invoice.

If at any time after the date of the offer the Consultant makes a general price reduction in the comparable price of any material covered by the Agreement to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Agreement for the duration of the term of the Agreement (or until the price is further reduced). Such price reduction will be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a general price reduction will mean any horizontal reduction in the price of an article or service offered (1) to Consultant's customers generally, or (2) in the Consultant's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for the offer on this Agreement. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, shall not be considered a general price reduction under this provision. The Consultant must invoice the Commission at such reduced prices indicating on the invoice that the reduction is pursuant to the Price Reduction provision of this Agreement. The Consultant, in addition, must within ten (10) calendar days of any general price reduction notify the assigned Procurement Officer of the Commission of such reduction by letter. Failure to do so may require termination of the Agreement.

- (b) The Consultant must furnish, within ten (10) calendar days after the end of the Agreement, a statement certifying either:
- i. That no general price reduction, as defined above, was made after the date of the offer; or
 - ii. If any such general price reductions were made, that is provided above, they were reported to the Procurement Officer within ten (10) calendar days, and the Commission was billed at the reduced prices.
- (c) Where one or more general price reductions were made, the statement furnished by the Consultant must include with respect to each price reduction:
- i. The date when notice of any such reduction was issued;
 - ii. The effective date of the reduction; and
 - iii. The date when the Procurement Officer was notified of any such reduction.

3.5 Standards and for Playground Equipment, Manufacturer and Services of the Provider

(a) The Playground Equipment must be a high-quality, safe and attractive product. Assemblages or combinations of Playground Equipment from 2 or more manufacturers will not be accepted.

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- (b) The manufacturer shall provide the following:
- (i) Limited 15 years warranty on all steel deck posts, clamp system and associated fastening hardware against structural failure caused by corrosion or deterioration from exposure to weather or by defective materials, or defective workmanship;
 - (ii) Limited 15 years warranty on all steel support legs and decks against structural failure caused by corrosion, defective materials or defective workmanship; and
 - (iii) Limited 15 years warranty on all play system steel components including railings, rungs rigid climbers, and plastic against structural failure caused by defective materials or defective workmanship.
 - (iv) One year full replacement after purchase under the agreement of any component part or assembly that fails to perform up to specification for any reason.
 - (v) Special labor warranty for labor and reasonable collateral expenses for one year from date of delivery of the equipment. Warranty repairs and collateral work will be performed by **Proposer**.
 - (vi) Warranty including labor and reasonable collateral expense should any Manufacturer's product recalls or retrofits occur during the first 5 years after delivery of the equipment or parts. Warranty repairs and collateral work will be performed by **Proposer**.
- (c) Playground equipment replacement and repair parts or equivalent/compatible parts must be available from the manufacturer throughout the warranty period.
- (d) The manufacturing processes must meet the current and relevant standards for such processes and the standards and requirements of this Agreement.
- (e) **American Standards for Testing and Materials (ASTM)**. All Playground Equipment must as a minimum meet the relevant ASTM standards for Equipment, components and materials, including ASTM F1487 - Structural Integrity Requirements for Equipment.
- (f) **Americans with Disabilities Act (ADA)**. All Playground Equipment and Designs must as a minimum meet the standards of the Americans with Disabilities Act (ADA), as understood by most recent administrative and judicial rulings and clarification(s) at the time of installation.
- (g) **Consumer Products Safety Commission (CPSC)**. All Playground Equipment and Designs must as a minimum meet the standards of the most recent version of the Consumer Products Safety Commission, Handbook for Public Playground Safety.
- (h) **International Playground Equipment Manufacturers Association (IPEMA)**. All Playground Equipment and Designs must as a minimum meet the standards of the most recent version of the International Playground Equipment Manufacturers Association. The manufacturer of the Playground Equipment must be a member of the IPEMA.
- (i) **The Chicago Standard**. The City of Chicago has adopted **The Chicago Standard**, a set of construction standards for public buildings. The Chicago Standard was developed to guide the design, construction and renovation of municipal facilities in a manner that provides healthier indoor environments, reduces operating costs and conserves energy resources. It also includes provisions for outfitting, operating and maintaining those

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facilities. The Chicago Standard takes advantage of new building technologies and practices to enhance the well-being and quality of life of everyone working in and using these buildings, as well as the neighborhoods in which they are located. The **Provider** will create or provide Designs that comply with The Chicago Standard, as applicable to each Task Order.

(j) **Mayor's Office for People with Disabilities.** When directed by the Executive Director, the Provider will consult with Mayor's Office of Persons with Disabilities (MOPD) Architectural Services Unit (ASU) regarding the ASU recommendation for a Task Order. The Provider will advise the Commission and the specific User Agency regarding the ASU recommendations before submitting the final Design to the Commission or specific User Agency.

(k) **Protection of the Environment.** Playground Equipment will be composed of materials and manufactured in such a manner as to protect the environment, including, but not limited to the use of recycled materials in the fabrication process.

(l) The **Provider** must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a professional firm or individual performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. The **Provider** acknowledges that it is entrusted with or has access to valuable and confidential information and records of the **Commission** and with respect to that information the **Provider** agrees to be held to the standard of care of a fiduciary.

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

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

3.6 Personnel

(a) General.

The **Provider** must investigate, evaluate, employ or engage, compensate, supervise and discharge, such employees and personnel as may be required in the discretion of the **Provider** for the proper performance of the Services and the protection of the **Commission's** interests in the Equipment. All such employees will be employees of the **Provider** or of a third party contractor engaged by the **Provider** and not of the **Commission**.

(b) Adequate Staffing.

The **Provider** 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 and trustworthy personnel that is fully equipped, licensed as appropriate,

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available as needed, qualified and assigned exclusively to perform the Services. The **Provider** must include among its staff the Key Personnel and positions as identified in Section 3.5(c) below.

(c) Key Personnel

The **Provider** must not reassign or replace Key Personnel without the written consent of the **Executive Director**, which consent the **Executive Director** will not unreasonably withhold. "Key Personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of Section 3.5. The **Executive Director** may at any time in writing notify the **Provider** that the **Executive Director** will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice the **Provider** must immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. Key Personnel, if any, are identified in EXHIBIT 3 - Key Personnel.

(d) Salaries and Wages

The **Provider** 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 the **Provider** underpays any such salaries or wages, the **Executive Director** may withhold, out of payments due to the **Provider**, 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 **Executive Director** for and on account of the **Provider** to the respective employees to whom they are due, as determined by the **Executive Director** in his sole discretion. The parties acknowledge that this Section 3.5(c) is solely for the benefit of the **Commission** and that it does not grant any third party beneficiary rights.

3.7 Minority and Women's Business Enterprises Commitment

In the performance of this Agreement, including the procurement and lease of materials or equipment, the **Provider** must use every reasonable effort to utilize minority business enterprises for not less than 25% and women business enterprises for not less than 5% of the value of the Agreement, in accordance with the Resolution passed by the Board of Commissioners of the Public Building Commission of Chicago on October 1, 2004, set forth in EXHIBIT 7, concerning participation of minority business enterprises and women business enterprises on contracts, other than construction contracts, awarded by the **Commission** and to furnish to the **Commission**, such reports and other information concerning compliance with such Resolution as may be requested by the **Commission** from time to time, except to the extent waived by the **Commission**.

3.8 Insurance

The **Provider** must purchase and maintain at all times during the term of this Agreement and any time period following expiration if the **Provider** is required to return and perform any of the Services or Additional Services under this Agreement, for the benefit of the **Commission** the insurance coverage set forth in EXHIBIT 4 - Insurance Requirements and Evidence of Insurance of this Agreement.

3.9 Indemnification

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(a) The **Provider** must defend, indemnify, keep and save harmless the Commissioners, officers, officials and employees of the **Commission** 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) the **Provider's** failure to perform or cause to be performed the **Provider's** covenants and obligations as and when required under this Agreement, including Environmental Covenants and the **Provider's** failure to perform its obligations to any Subcontractor;
- (iv) the **Commission's** exercise of its rights and remedies under Section 9.2 of this Agreement; and
- (v) injuries to or death of any employee of the **Provider** 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 court costs, investigation and expert fees 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 the **Provider's** performance or non-performance of its Services breach of this Agreement or to the **Provider's** negligent or otherwise wrongful (including negligent or tortious) acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees or invitees.

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

(d) To the extent permissible by law, the **Provider** waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of the **Provider** 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 **Commission**, 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 the **Provider's** performance of Services beyond the term. The **Provider** acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the **Commission** are apart from and not limited by the **Provider's** duties under this Agreement, including the insurance requirements in EXHIBIT 4 - Insurance Requirements and Evidence of Insurance of this Agreement.

3.10 Indemnity by Third Parties

Upon written request by the **Provider**, the **Commission** may require, by appropriate provision in contracts let by the **Commission** after the date of this Agreement with respect to

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the Playground Equipment that the contractor(s) and consultant(s) under such contracts must indemnify, save and hold harmless the **Commission**, the specific User Agency and the **Provider**, and each of them, and their respective commissioners, board members, officers, officials and employees, from all claims, demands, suits, actions, losses, costs and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise out of the work under such contract, and that the contractor(s) and consultant(s) under such contracts will purchase and maintain during the life of such contract such insurance as the **Commission** may require. The amount and insurer for such insurance are subject to approval by the **Commission**.

3.11 Ownership of Documents

All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to the **Provider** under this Agreement are property of the **Commission**, including, as further described in **Section 3.10** below, all copyrights inherent in them or their preparation. During performance of its Services, the **Provider** is responsible for any loss or damage to the Deliverables, data, findings or information while in the **Provider's** or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of the **Provider**. If not restorable, the **Provider** must bear the cost of replacement and of any loss suffered by the **Commission** on account of the destruction, as provided in **Section 3.8**.

3.12 Copyright Ownership

(a) The **Provider** and the **Commission** intend that, to the extent permitted by law, the Deliverables to be produced by the **Provider** at the **Commission'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 **Commission** will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

(b) To the extent that any Deliverable does not qualify as a "work made for hire," the **Provider** hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the **Commission**, 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 **Commission** 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. The **Provider** 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 **Commission** may reasonably request in order to assist the **Commission** in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the **Commission**. The **Provider** warrants to the **Commission**, its successors and assigns, that on the date of transfer the **Provider** 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. The **Provider** 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. The **Provider** warrants that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

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3.13 Records and Audits

(a) Records

- (i) The **Provider** must deliver or cause to be delivered to the **Executive Director** all documents, including all Deliverables prepared for the **Commission** under the terms of this Agreement, to the **Executive Director** promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. In the event of the failure by the **Provider** to make such delivery upon demand, then and in that event, the **Provider** must pay to the **Commission** any damages the **Commission** may sustain by reason of the **Provider's** failure.
- (ii) The **Provider** must maintain any such records including Deliverables not delivered to the **Executive Director** or demanded by the **Executive Director** for a period of 5 years after the final payment made in connection with this Agreement. The **Provider** must not dispose of such documents following the expiration of this period without notification of and written approval from the **Executive Director** in accordance with **Article 11**.

(b) Audits

- (i) The **Provider** and any of the **Provider's** Subcontractors must furnish the **Executive Director** with all information that may be requested pertaining to the performance and cost of the Services. The **Provider** must maintain records showing actual time devoted and costs incurred. The **Provider** must keep books, documents, paper, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the **Executive Director** and any other interested governmental agency, at reasonable times during the performance of its Services.
- (ii) To the extent that the **Provider** 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 the **Provider** must maintain and make similarly available to the **Executive Director** detailed records supporting the **Provider's** allocation to this Agreement of the costs and expenses attributable to any such shared usages.
- (iii) The **Provider** 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 **Commission** a right of access to records and documents is intended to impair, limit or affect

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any right of access to such records and documents which the **Commission** would have had in the absence of such provisions.

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

(1) If the audit has revealed overcharges to the **Commission** 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 **Provider** must reimburse the **Commission** for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the **Commission** conducts;

(2) If, however, the audit has revealed overcharges to the **Commission** 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 the **Provider** must reimburse the **Commission** for the full cost of the audit and of each subsequent audit.

(c) Failure of the **Provider** to reimburse the **Commission** in accordance with **Section (a) or (b)** above is an event of default under **Section 9.1** of this Agreement, and the **Provider** will be liable for all of the **Commission’s** costs of collection, including any court costs and attorneys’ fees.

3.14 Confidentiality

(a) Unless agreed otherwise by the **Commission** in writing, all Project Data are the property of the **Commission** and are confidential. The **Provider** will, unless specifically authorized by the **Commission** in writing or required by law, make Project Data available only to the **Executive Director** and, on a need-to-know basis, the **Provider’s** employees and Subcontractors.

(b) Except as authorized in writing by the **Executive Director**, the **Provider** 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 Task Order to which the Services pertain.

(c) If the **Provider** is presented with a subpoena or a request by an administrative agency regarding Project Data, the **Provider** must immediately give notice to the **Executive Director** with the understanding that the **Commission** will have the opportunity to contest such process by any means available to it before any Project Data are submitted to the court, administrative agency, or other third party. The **Provider**, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

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(d) The **Provider** must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by (a), (b) and (c) and any other confidentiality provisions in this Agreement.

3.15 Assignments and Subcontracts

(a) The **Provider** must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement or any part of it, unless otherwise provided for in this Agreement or without the express written consent of the **Commission**. 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 **Executive Director** operate to relieve the **Provider** of any of its obligations or liabilities under this Agreement.

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

(c) The **Provider**, upon entering into any agreement with a Subcontractor, must furnish a copy of that agreement to the **Commission** upon request of the **Executive Director**. All subcontracts must contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the **Commission**. If the agreements do not prejudice any of the **Commission'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) The **Provider** must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the **Commission**. 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 the **Provider** under this Agreement, without such prior written approval, has no effect upon the **Commission**.

(e) The **Commission** reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor.

ARTICLE 4. TERM OF PERFORMANCE

4.1 Term of Performance

(a) This Agreement takes effect as of September 1, 2012 ("**Effective Date**") and continues for **2 years** or until this Agreement is terminated in accordance with its terms, whichever occurs first.

(b) This Agreement is subject to the **Commission's** right to extend it under **Section 4.3**.

4.2 Timeliness of Performance

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(a) The **Provider** must provide the Services and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of **Section 3.1** and **EXHIBIT 1 - Scope of Services**. The **Provider** acknowledges that failure of the **Provider** to comply with the time limits in this Agreement may result in economic or other losses to the **Commission**.

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

4.3 Agreement Extension Option

The **Commission** may at any time before this Agreement expires elect to extend this Agreement up to **3 times** for **1 year** each time under the same terms and conditions as this original Agreement, by notice in writing to the **Provider**. If extended, sixty days prior to the end of original 2 year period, price changes, if any, will be negotiated based on appropriate indices.

ARTICLE 5. COMPENSATION

5.1 Basis of Payment

The **Commission** will pay the **Provider** according to the Schedule of Compensation in **EXHIBIT 2 - Schedule of Compensation** for the satisfactory performance of the Services.

5.2 Method of Payment

The **Provider** must submit original monthly invoices to the **Executive Director** for labor and other direct costs as billed, as outlined in **EXHIBIT 2 - Schedule of Compensation**. The invoices must be in such detail as the **Executive Director** requests. The **Executive Director** will process payment within 60 days after receipt of invoices and all supporting documentation necessary for the **Executive Director** to verify the Services provided under this Agreement.

5.3 Non-Appropriation

(a) If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the **Commission** for payments to be made under this Agreement, then the **Executive Director** will notify the **Provider** 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.

(b) Payments for Playground Equipment delivered and Services completed to the date of notification will be made to the **Provider** except that no payments will be made or due to the **Provider** under this Agreement beyond those amounts appropriated and budgeted by the **Commission** to fund payments under this Agreement.

(c) The **Commission's** liability hereunder is limited to the funds allocated to the **Commission** for the design and acquisition of the Equipment.

ARTICLE 6. DISPUTES

6.1 General

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(a) All disputes arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including questions concerning allowability of compensation, and all claims for alleged breach of contract will be presented at the Monthly Meeting following knowledge of the event.

(b) Except as otherwise provided in this Agreement, if a dispute under this Agreement is not resolved by the parties, the **Provider** may present such dispute to the **Executive Director** for final determination.

(c) The sole and exclusive remedy to challenge the final determination of the **Executive Director** is judicial review by means of a common law writ of certiorari.

6.2 Procedure

(a) The **Provider** will make all requests for determination of disputes in writing, specifically referencing this Section, and will include:

- (i) the issue(s) presented for resolution;
- (ii) a statement of the position of **Provider**;
- (iii) the facts underlying the dispute;
- (iv) reference to the applicable provisions of this Agreement by page and section;
- (v) identification of any other parties believed to be necessary to the resolution;
- (vi) all documentation which describes and relates to the dispute; and
- (vii) if the request is to the **Executive Director** for final determination, include a copy of the minutes from the Monthly Meeting at which the issue(s) was presented.

(b) The **Executive Director** may thereafter reach his determination in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable.

6.3 Effect

(a) The **Executive Director's** final determination will be rendered in writing no more than 45 business days after receipt by the **Executive Director**, unless the **Executive Director** notifies **Provider** that additional time for the final determination is necessary. The **Executive Director's** final determination will be conclusive, final, and binding on all parties.

(b) The **Provider** must follow the procedures set out in this Section and receive the **Executive Director's** final determination as a condition precedent to filing a complaint in the Circuit Court of Cook County or pursuing any alternative dispute resolution procedure that may be agreed by the parties.

(c) The **Provider** will not withhold performance of any Services required by the **Commission** under this Agreement during the dispute resolution period.

6.4 No Liens

The **Provider** waives and releases, for itself and its successors, assigns, legal representatives and subcontractors, any claim of a lien of change against the Playground Equipment with respect to Services performed or monies or other consideration due under this Agreement.

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ARTICLE 7. COMPLIANCE WITH ALL LAWS

7.1 Compliance with All Laws Generally

(a) The **Provider** must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances, executive orders and regulations in effect now or later and whether or not they appear in this Agreement, including those set forth in this **Article 7**, and the **Provider** must pay all taxes and obtain all licenses, certificates and other authorizations required by them. The **Provider** must require all Subcontractors to do so, also.

(b) The **Provider** must execute and must cause any Subcontractors to execute a Disclosure Affidavit in the form attached to this Agreement as **EXHIBIT 5 - Disclosure Affidavit**. The **Provider** and Subcontractors must keep current the information provided in the Disclosure Affidavit during the term of this Agreement. Notwithstanding acceptance by the **Executive Director** of the Disclosure Affidavit, failure of the Disclosure Affidavit to include all information renders this Agreement voidable at the option of the **Commission**.

(c) 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.

7.2 Nondiscrimination

(a) In performing its Services under this Agreement, the **Provider** must comply with applicable laws prohibiting discrimination against individuals and groups.

(b) In performing under this Agreement, the **Provider** will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice.

(c) The **Provider** certifies that it is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 et seq; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended.

(d) The **Provider** will furnish such reports and information as may be requested by the **Executive Director**, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

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(e) The **Provider** certifies that it is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act).

(f) The **Provider** will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et. seq. If, in the performance of this Agreement, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the **Commission** may withhold from the **Provider**, out of payments due to the **Provider**, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Agreement and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the **Commission** for and on account of the **Provider** to the respective employees to whom they are due, as determined by the **Executive Director** in his sole discretion.

(g) The **Provider** must incorporate all of this **Section 7.2** 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.

7.3 Deemed Inclusion

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

ARTICLE 8. SPECIAL CONDITIONS

8.1 Warranties and Representations

In connection with signing and carrying out this Agreement, the **Provider**:

(a) warrants that the **Provider** 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 the **Provider** 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 the **Provider** is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;

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

(d) warrants that the **Provider** and its Subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the **Executive Director** to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the **Commission**;

(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

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this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and the **Provider** 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 the **Provider** and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;

(g) warrants that neither the **Provider** nor any affiliate of the **Provider** is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the User Agency or the Commission may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

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

(h) 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 9.1 and 9.3 of this Agreement.

8.2 Ethics

In addition to the foregoing warranties and representations, the **Provider** warrants:

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

(b) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to the prime the **Provider** or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(c) The **Provider** further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the **Commission**.

8.3 Joint and Several Liability

If the **Provider**, 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 every

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obligation or undertaking in this Agreement to be fulfilled or performed by the **Provider** is the joint and several obligation or undertaking of each such individual or other legal entity.

8.4 Business Documents

At the request of the **Executive Director**, the **Provider** must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

8.5 Conflicts of Interest

(a) No Commissioner, employee, officer, or official of the **Commission** 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 Of Chicago or City Of Chicago employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

(b) The **Provider** covenants that it, and to the best of its knowledge and after diligent inquiry, its Subcontractors if any (**Provider** and its Subcontractors will be collectively referred to in this Section 8.5 only as "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the **Executive Director**, Consulting Parties must disclose their past client lists and the names of any clients with whom they have an ongoing relationship to the **Executive Director**. Consulting Parties are not permitted to perform any Services for the **Commission** on applications or other documents submitted to the **Executive Director** 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 **Executive Director**.

(d) The **Provider** further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Services or have access to any confidential information, as described in Section 3.13 of this Agreement. If the **Executive Director** in his reasonable judgment, determines that any of Consulting Parties' Services for others conflict with the Services they are to render for the **Commission** under this Agreement, Consulting Parties must terminate such other services immediately upon request of the **Executive Director**.

8.6 Non-Liability of Public Officials

The **Provider** and any assignee or Subcontractor of the **Provider** must not charge any Commissioner, employee, officer or official of the **Commission** personally with any liability or expenses of defense or hold any Commissioner, employee, officer or official of the **Commission** personally liable to them under any term or provision of this Agreement or because of the **Commission's** execution, attempted execution or any breach of this Agreement or for any other reason whatsoever.

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

9.1 Events of Default

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Each of the following occurrences constitutes an Event of Default by the **Provider** under this Agreement:

(a) Failure or refusal on the part of the **Provider** to duly observe or perform any obligation or agreement on the part of the **Provider** contained in this Agreement, which failure or refusal continues for a period of 10 days (or such longer period as the **Executive Director** in his sole discretion, may determine if such failure is not capable of being cured within such 10-day period) after the date on which written notice of it has been given to the **Provider** by the **Executive Director**;

(b) A materially false representation or warranty by the **Provider** in this Agreement or throughout the performance of the Services.

(c) The **Provider** becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals will take any action in furtherance of any of the foregoing;

(d) Any proceeding is commenced against the **Provider** seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within 60 days following commencement of the proceeding, or appointment of, without the **Provider's** consent or acquiescence, any trustee, receiver, liquidator or other custodian of all or any substantial part of the **Provider's** assets and properties, and such appointment will not have been vacated, stayed, discharged, bonded or otherwise dismissed within 60 days of the appointment.

(e) The **Provider's** material failure to perform any of its obligations under this Agreement including:

- (i) Failure due to a reason or circumstance within the **Provider's** reasonable control to perform the Services with sufficient personnel, and equipment or with sufficient material to ensure the performance of the Services;
- (ii) Failure to properly perform the Services or inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
- (iii) Failure to promptly re-perform within a reasonable time the Services that were rejected per the Terms of this Agreement;
- (iv) Discontinuance of the Services for reasons within the **Provider's** reasonable control;
- (v) Failure to comply with a material term of this Agreement, including the provisions concerning insurance and nondiscrimination;

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- (vi) Any change in ownership or control of the **Provider** without prior written approval of the **Executive Director** which approval the **Executive Director** will not unreasonably withhold;
- (vii) The **Provider's** default under any other agreement it presently may have or may enter into with the **Commission**. The **Provider** acknowledges that in event of a default under this Agreement the **Executive Director** may also declare a default under any such other agreements.
- (viii) Failure to comply with Section 7.1 in the performance of the Agreement.

9.2 Remedies

(a) If an Event of Default occurs and continues, then the **Commission** may exercise any right, power or remedy permitted to it by law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to **Provider**, in which event the **Commission** has no further obligations hereunder or liability to **Provider** except as to payment for Services actually received and accepted by the **Commission** through the effective date of termination. No courses of dealing on the part of the **Commission** or delay or failure on the part of the **Commission** to exercise any right will operate as a waiver of such right or otherwise prejudice the **Commission's** rights, powers or remedies.

(b) The occurrence of any event of default permits the Executive Director, to declare the **Provider** in default. The **Executive Director** may in his sole discretion give the **Provider** 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 **Executive Director**. Whether to declare the **Provider** in default is within the sole discretion of the **Executive Director** and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement.

(c) The **Executive Director** will give the **Provider** 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 **Executive Director** gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate (but not the decision not to terminate) is final and effective upon giving the notice. The **Executive Director** may give a Default Notice if the **Provider** fails to affect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 9.2 and Article 11, the **Provider** 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 **Executive Director**. After a Default Notice is issued by the Executive Director, the **Commission** 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 the **Provider's** expense and as agent for the **Provider**, either directly or through others, and bill the **Provider** for the cost of the Services, and the **Provider** must pay the difference between the total amount of this bill and the amount the **Commission** would have paid the **Provider** under the terms and conditions of this Agreement for the Services that were assumed by the **Commission** as agent for the **Provider** under this Section 9.2;

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- (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 **Executive Director**;
- (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 the **Provider's** compensation under this Agreement;
- (vi) The right to deem the **Provider** non-responsible in future contracts to be awarded by the **Commission**.

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

9.3 Remedies Not Exclusive

No right or remedy in this Agreement conferred upon or reserved to the **Commission** is exclusive of any right or remedy provided or permitted under this Agreement or by law or equity, but each is cumulative of every other right or remedy given in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time. 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 **Executive Director** considers expedient.

9.4 Early Termination

(a) In addition to termination under **Sections 9.1 and 9.2** of this Agreement, the **Commission** 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 **Executive Director** to the **Provider**. The **Executive Director** will give notice to the **Provider** in accordance with the provisions of **Article 11**. The effective date of termination will be the date the notice is received by the **Provider** or the date stated in the notice, whichever is later. If the **Commission** 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 **Executive Director** effective **10 days** after the date the notice is considered received as provided under **Article 11** of this Agreement (if no date is given) or upon the effective date stated in the notice.

(b) After the notice is received, the **Provider** 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 5**, 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 **Executive Director** and the **Provider** must attempt to

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agree on the amount of compensation to be paid to the **Provider**, but if not agreed on, the dispute must be settled in accordance with **Article 6** of this Agreement. The payment so made to the **Provider** is in full settlement for all Services satisfactorily performed under this Agreement.

(c) The **Provider** 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 **Commission** arising from termination of subcontracts after the early termination. The **Provider** will not be entitled to make any early termination claims against the **Commission** resulting from any Subcontractor's claims against the **Provider** or the **Commission** to the extent inconsistent with this provision.

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

9.5 Right to Offset

(a) In connection with performance under this Agreement, the **Commission** may offset any excess costs incurred if the **Commission**:

- (i) terminates this Agreement for default or any other reason resulting from the **Provider's** performance or non-performance;
- (ii) exercises any of its remedies under **Section 9.2** of this Agreement; or
- (iii) has any credits due or has made any overpayments under this Agreement.

(b) The **Commission** may offset these excess costs by use of any payment due for Services completed before the **Commission** terminated this Agreement or before the **Commission** exercised any remedies. If the amount offset is insufficient to cover those excess costs, the **Provider** is liable for and must promptly remit to the **Commission** 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 **Commission**.

(c) No such debt(s) will be offset from the price or compensation due under this Agreement if the **Provider**:

- (i) is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
- (ii) has filed a petition in bankruptcy and the debts owed the **Commission** are dischargeable in bankruptcy.

(d) In connection with any liquidated or un-liquidated claims against the **Provider**, without breaching this Agreement, the **Commission** 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 un-liquidated claims that the **Commission** has against the **Provider** unrelated to this Agreement.

(e) When the **Commission's** claims against the **Provider** are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the **Commission** will reimburse the **Provider** to the extent of the amount the **Commission** has offset against this Agreement inconsistently with such determination or resolution.

9.6 Force Majeure

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Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. If a force majeure occurs, the party delayed or unable to perform will give prompt notice to the other party, and the **Commission** may, at any time during the continuation of the force majeure event, elect to suspend the performance of the **Provider** under this Agreement for the duration of the force majeure. The **Commission** will not be obligated to pay for the Services to the extent and for the duration that performance of the Services is delayed or prevented by force majeure, but, provided the **Provider** is not in default of any obligation of the **Provider** under this Agreement, the **Commission** will pay to the **Provider**, according to the terms of this Agreement, all compensation and reimbursements due to the **Provider** for periods up to the effective date of suspension. The term “force majeure” means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law. The term does not include, for example, typical Chicago inclement weather (i.e. weather the severity of which is less than a standard deviation from the 5-year mean for the O’Hare, as established by the National Oceanic and Atmospheric Administration) or labor force strikes.

ARTICLE 10. GENERAL CONDITIONS

10.1 Entire Agreement

(a) General

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

(b) No Collateral Agreements

The **Provider** 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 **Commission**, its respective Commissioners, officers, officials and employees, has induced the **Provider** to enter into this Agreement or has been relied upon by the **Provider**, 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 (v) immediately above, affecting or having any

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connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

(c) No Omissions

The **Provider** acknowledges that the **Provider** was given ample opportunity and time and was requested by the **Commission** 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. The **Provider** did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, the **Provider** relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

10.2 Counterparts

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

10.3 Amendments

(a) Except as provided in **Section 5.3** 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 the **Provider** and by the **Commission**. The **Commission** incurs no liability for Additional Services without a written amendment to this Agreement under this **Section 10.3**.

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

10.4 Governing Law and Jurisdiction

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

10.5 Severability

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other

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provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

10.6 Assigns

Except as otherwise provided in this Agreement, all of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

10.7 Cooperation

The **Provider** must at all times cooperate fully with the **Executive Director** and act in the **Commission's** best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the **Provider** must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the **Commission** in connection with the termination or expiration, including those requirements described in **EXHIBIT 1 - Scope of Services**.

10.8 Waiver

(a) 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.

(b) Whenever under this Agreement the **Executive Director** by a proper authority waives the **Provider's** performance in any respect or waives a requirement or condition to either the **Commission's** or the **Provider'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 **Executive Director** may have waived the performance, requirement or condition. Such waivers must be provided to the **Provider** in writing.

(c) The waiver by either party of any breach of this Agreement will not constitute a waiver as to any succeeding breach.

10.9 Independent Contractor

(a) Under this Agreement, the relationship of the **Provider** to the **Commission** is that of an independent contractor and the **Provider**, except to the extent expressly provided to the contrary in this Agreement, will have no right or authority to make contracts or commitments for or on behalf of the **Commission**, to sign or endorse on behalf of the **Commission** any instruments of any nature or to enter into any obligation binding upon the **Commission**.

(b) This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between the **Provider** and the **Commission**.

(c) The rights and the obligations of the parties are only those set forth in this Agreement.

ARTICLE 11. NOTICES

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11.1 The **Provider** will notify the **Commission** promptly in writing of all significant occurrences and circumstances affecting this Agreement or affecting in any manner the interest of the **Commission** in the Playground Equipment or Services.

11.2 In an emergency, the **Provider** will immediately notify the **Commission** in person or by telephone so that prompt arrangements may be made to address the emergency situation.

11.3 The **Provider** will notify the **Commission** promptly and forward to the **Commission** any complaints, warnings, notices, or summonses received by the **Provider** relating to compliance of the Playground Equipment or Services with requirements of any ordinance, law, rule, or regulation including environmental requirements of the city, county, state, or federal government or any other public entity having jurisdiction as identified in **Section 7.1 Compliance with All Laws Generally**.

11.4 All notices required to be given under this Agreement must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the **Executive Director** for the **Commission**, or the Key Person for the **Provider** at their respective addressed set forth above.

11.5 If given as provided in this Agreement, such notice is deemed to have been given on the date of delivery, if delivered by hand, and on the third business day after mailing, if given by mail. Refusal to accept delivery has the same effect as receipt. The **Commission** or **Provider** may, from time to time, change the address to which notices will be sent by giving notice to the other party in the manner provided in this subparagraph.

ARTICLE 12. AUTHORITY

Execution of this Agreement by the **Provider** 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 the **Provider** have been made with complete and full authority to commit the **Provider** 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.

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EXHIBIT 1 - SCOPE OF SERVICES

This Agreement takes effect as of September 1, 2012 ("Effective Date") and continues for 2 years or until this Agreement is terminated in accordance with its terms, whichever occurs first. The Commission may at any time before this Agreement expires elect to extend this Agreement up to 3 times for 1 year each time under the same terms and conditions as this original Agreement, by notice in writing to the Provider. If extended, sixty days prior to the end of original 2 year period, price changes, if any, will be negotiated based on appropriate indices.

The Provider will provide all Services and Deliverables required to design and certify the installation and Playground Equipment for each Task Order. It is expressly understood and agreed that references in this Agreement to "approved by the Commission" or to "approval by the Commission" will not be interpreted to absolve the Provider from liability due to errors and omissions.

In this Scope of Services, regardless of whether a time limit is specified for particular tasks or duties, it is intended that the Provider will perform its Services promptly, with sufficient staffing, and all in accordance with the standard of performance in this Agreement.

The Executive Director will assist the Commission in managing the Task Order and will have the authority, as specifically directed by the Commission, to act on its behalf.

1) VOLUME

- a) Anticipated, the successful Proposer will provide playground equipment and services for the Commission and User Agencies at a combined total of approximately 100 new sites plus replacements and new assemblies for existing sites over the two year period.
- b) Task Orders will be issued by the Commission and the User Agencies for Playground Equipment and Services approximately 100 new sites will be constructed over the two year period. Playgrounds will vary in size, site conditions and equipment selected at the time of construction.
- c) In addition to new playground installations, Task Orders will be issued by the Commission and the User Agencies for repair and replacement parts and upgrades to existing playgrounds.

2) SERVICES AND DELIVERABLES

For each Task Order or as requested by the Commission or the User Agency:

- a) Provide the name and title of the primary contact person for the Commission and User Agencies at the start of each Task Order.
- b) Provide the following documents in hard copy and on CD (using Autodesk® and AutoCAD® software in authentic DWG™, DXF™, and DWF™ file format for designs, drawings, instructions and other documents as requested by the Commission or User Agency):
 - i) Task Order guidelines
 - ii) Planning checklist
 - iii) Designs in 2-dimensional plan view
 - iv) Color renderings in 3-dimensions

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- v) Technical specification sheets
- vi) Installation instructions
- vii) Bill of materials
- viii) Cost estimate
- ix) Digital photos
- c) Provide the following materials:
 - i) Specimen color samples
 - ii) Maintenance kit
 - iii) Inspection certification check list
- d) Provide a written estimate of the schedule from issuance of Task Order to expected delivery date of materials.
- e) Attend the planning/design meeting. Provide a summary of the action items assigned to the Provider to either the Commission or the specific User Agency, as appropriate.
- f) When directed by the Commission, consult with the Mayor's Office of People with Disabilities (MOPD) Architectural Services Unit (ASU) regarding design and advise the Commission and the specific User Agency regarding the ASU recommendations.
- g) Place the order for Playground Equipment as directed by the Commission or the specific User Agency.
- h) Inspect the playground equipment and installation during the punch list review site inspection set for each playground by the Commission or the specific User Agency.
- i) Present certification to the Commission or the specific User Agency, a written certification of compliance and warranty for the playground equipment and installation or a written punch list of items that must be corrected before compliance and certification.
- j) 1 month after installation, replacement or repair of Playground Equipment under this Agreement, re-inspect the Playground Equipment and present a report to the Commission or the specific User Agency within 7 days of such inspection. The report will include a description of the condition of the Playground Equipment and recommendations for replacement, repair, maintenance and upgrades.

3) ADDITIONAL SERVICES

Those services which are within the general scope of Services of this Agreement, but beyond the description of services required under **Section 3.1** of this Agreement, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services require the approval of the **Commission** in a written amendment under **Section 10.3** of this Agreement before the **Provider** is obligated to perform those Additional Services and before the **Commission** becomes obligated to pay for those Additional Services.

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EXHIBIT 2 - COMPENSATION OF THE PROVIDER

2) GENERAL

- a) The agreement(s) will not guarantee a minimum volume, although the Commission is interested in an optimal combination of quality, services and price and proposed volume discounts will be considered.
- b) The Services and Deliverables must be approved by the Commission or specific User Agency before any payment will be processed.
- c) Each User Agency and the Commission may choose to make purchases separately under the agreement(s). However, volume discounts will be based on the aggregate number and volume of purchases made under the agreement by the Commission and all participating User Agencies during each 12-month period, utilizing the date of the task orders, of the agreement.

3) CATALOG PRICING

- a) The price list will itemize every piece of Playground Equipment and replacement/repair part and its price under this Agreement.
- b) Shipping or freight charges and re-stocking fees, if any, must be described separately. Include the method of calculation for such charges and fees.
- c) The Commission or User Agency will provide a copy of the appropriate sales tax exemption letter, when issuing a Task Order for Playground Equipment.
- d) The price list may be replaced with the approval of the Executive Director, provided that the overall cost of an item or its equivalent part number previously listed does not increase.
- e) Subject to the terms of the Agreement, invoices will be paid monthly, in arrears.

4) VOLUME DISCOUNT

- a) Below is the volume discount, off of the catalog list pricing, matrix:

Volume	Discount Percentage
\$1-\$500,000	%
\$500,001-\$1,000,000	%
\$1,000,001-\$1,500,000	%
\$1,500,001-\$2,000,000	%
\$2,000,001-\$2,500,000	%
\$2,500,001-\$3,000,000	%
\$3,000,001-\$3,500,000	%
\$3,500,001-\$4,000,000	%
\$4,000,001-\$4,500,000	%
\$4,500,001-\$5,000,000	%
\$5,000,001-\$5,500,000	%
\$5,500,001-\$6,000,000	%
\$6,000,001- over	%

- b) The volume discount will be applied per invoice in each 12-month period, utilizing the date of the task orders. When an invoice causes the Commission's or User Agency's aggregate yearly purchases to cross a discount threshold, the increased discount rate will be applied to that portion of the invoice over the threshold, not the entire invoice.

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- c) If at any time after the date of the offer the Consultant makes a general price reduction in the comparable price of any material covered by the Agreement to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Agreement for the duration of the term of the Agreement (or until the price is further reduced). Such price reduction will be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a general price reduction will mean any horizontal reduction in the price of an article or service offered (1) to Consultant's customers generally, or (2) in the Consultant's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for the offer on this Agreement. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, shall not be considered a general price reduction under this provision. The Consultant must invoice the Commission at such reduced prices indicating on the invoice that the reduction is pursuant to the Price Reduction provision of this Agreement. The Consultant, in addition, must within ten (10) calendar days of any general price reduction notify the assigned Procurement Officer of the Commission of such reduction by letter. Failure to do so may require termination of the Agreement.

The Consultant must furnish, within ten (10) calendar days after the end of the Agreement, a statement certifying either:

- i. That no general price reduction, as defined above, was made after the date of the offer; or
- ii. If any such general price reductions were made, that is provided above, they were reported to the Procurement Officer within ten (10) calendar days, and the Commission was billed at the reduced prices.

Where one or more general price reductions were made, the statement furnished by the Consultant must include with respect to each price reduction:

- i. The date when notice of any such reduction was issued;
- ii. The effective date of the reduction; and
- iii. The date when the Procurement Officer was notified of any such reduction.

5) COMPENSATION FOR BASIC SERVICES

- a) The **Provider** will not be entitled to compensation for the basic Services performed pursuant to the terms of this Agreement.

6) COMPENSATION FOR ADDITIONAL SERVICES

- a) The **Provider** will be compensated at rates negotiated for Additional Services and added to this Agreement by amendment.

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EXHIBIT 3 - KEY PERSONNEL
SUBMITTED BY THE PROVIDER
FOLLOWS THIS PAGE

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EXHIBIT 4 - INSURANCE REQUIREMENTS

The Proposer must provide and maintain at Proposer's own expense, until expiration or termination of the agreement and during the time period following expiration if Proposer is required to return and perform any additional work, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

D.1. INSURANCE TO BE PROVIDED:

D.1.1. Workers' Compensation and Employers Liability

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under the Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident, illness, or disease.

D.1.2. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include, but are not limited to the following: All premises and operations, products/completed operations, defense, and contractual liability. The Public Building Commission of Chicago, Board of Education of the City of Chicago and City of Chicago must be named as Additional Insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for Proposer must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

D.1.3. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Proposer must provide Automobile Liability Insurance, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The Public Building Commission of Chicago, Board of Education of the City of Chicago and City of Chicago must be named as Additional Insured on a primary, non-contributory basis.

Subcontractors performing work for the Proposer must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

D.1.4. Professional Liability

When Proposer performs work in connection with the Agreement, Professional Liability Insurance must be maintained with limits of not less than \$2,000,000 covering acts, errors, or omissions. The policy will include coverage for wrongful acts, including but not limited to errors, acts or omissions, in the rendering or failure to render professional services resulting in a pollution incident. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work on the Agreement. Coverage must be maintained for two years after substantial completion. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

Subcontractors performing work for Proposer must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

D.1.5. Property

The Proposer is responsible for all loss or damage to equipment at full replacement cost up until it is accepted by contractor responsible for the installation. The requirement includes equipment while in transit.

D.1.6. Valuable Papers

When any plans, designs, drawings, specifications, data, media, and documents are produced or used under the Agreement, Valuable Papers Insurance will be maintained in an amount to insure against any loss whatsoever, and

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will have limits sufficient to pay for the re-creation and reconstruction of such records.

ADDITIONAL REQUIREMENTS

The Proposer must furnish the Public Building Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if any insurance policy has an expiration or renewal date occurring during the term of this Agreement. The Proposer must submit evidence of insurance to the PBC prior to Agreement award. The receipt of any certificate does not constitute agreement by the PBC that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Public Building Commission to obtain certificates or other insurance evidence from Proposer is not a waiver by the PBC of any requirements for the Proposer to obtain and maintain the specified insurance. The Proposer will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Proposer of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a breach of the Agreement, and the PBC retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The PBC reserves the right to obtain copies of insurance policies and records from the Proposer and/or its subcontractors at any time upon written request.

The insurance must provide for 30 days prior written notice to be given to the PBC if coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Proposer. All self-insurance, retentions and/or deductibles must conform to these requirements.

The Proposer hereby waives and agrees that their insurers waive their rights of subrogation against the Public Building Commission of Chicago, Board of Education of the City of Chicago and City of Chicago, their respective Board members, employees, elected officials, or representatives.

If Proposer is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a Named Insured.

The insurance coverage and limits provided by Proposer in no way limit the Proposer's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the Public Building Commission of Chicago, Board of Education of the City of Chicago and City of Chicago do not contribute with insurance provided by the Proposer under the Agreement.

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

The Proposer must require all its subcontractors to provide the insurance required in this Agreement, or Proposer may provide the coverage for its subcontractors. All subcontractors are subject to the same insurance requirements of Proposer unless otherwise specified in this Agreement.

If Proposer or its subcontractors desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

The Public Building Commission's Director of Risk Management maintains the rights to modify, delete, alter or change these requirements.

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EXHIBIT 5 - DISCLOSURE AFFIDAVIT
EXECUTED BY THE PROVIDER
FOLLOWS THIS PAGE

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EXHIBIT 6 - DISCLOSURE OF RETAINED PARTIES
EXECUTED BY THE PROVIDER
FOLLOWS THIS PAGE

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EXHIBIT 7 - MBE/WBE SPECIAL CONDITIONS
POLICY OF THE COMMISSION
FOLLOWS THIS PAGE