

# PUBLIC BUILDING COMMISSION OF CHICAGO

DATE: October 3, 2013

## ADDENDUM NO.1 TO CONTRACT NO. PS1916

FOR

### PROGRAM AND PROJECT CONTROLS SERVICES

For which proposals are due to the Public Building Commission of Chicago, Richard J. Daley Center, Room 200, Chicago, Illinois 60602, at 10:00AM (CST) on October 15, 2013.

The following revisions/clarifications/changes are hereby incorporated into the above referenced contract documents. All other provisions and requirements as originally set forth except as amended by addenda remain in full force and are binding.

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#### REVISION:

REVISION 1: Strike and replace Section 4.2.2.iii with the following:

Controls Services Plan. The Controls Services Plan must include a comprehensive approach and staffing plan for the required services. Proposed billing rates must be provided for all personnel included in the staffing plan. Proposed managers and other personnel indicated in the staffing plan need not be identified by name but summary level experience and qualifications for individuals in management roles should be described.

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#### QUESTIONS AND ANSWERS:

Question 1: Could you please clarify if detailed construction cost estimating services are required as part of this contract or will the PBC be procuring these services elsewhere.

Response 1: Construction cost estimating services are not required as part of this contract.

Question 2: Please provide a list of current software being used as part of the program and project controls for the PBCC projects. Also, if you would, advise as to any applications that may have been modified or developed in house for use in the PBCC's control strategy.

Response 2: The PBC's existing Program and Project Controls and Project Management software applications are included in Section 3.4.4 and include, but are not limited to: CW/CT Space (McClaren Collaboration Workspace v.8.1.9) for web-based document control and collaboration, Oracle P6 (2.1v7) for Program and Project level schedule management, Oracle Contract Management (v13) and InfoMaker (v10) for Budget/Cost Management. Microsoft Suite, including Excel and Access, is used to support Department level reporting and operations. Additional Program Operations Systems include LCP Tracker and B2GNow for Compliance Management and MIP/Sage for Financial Management.

Additionally, the PBC uses a custom Web-Based Reporting Application System for Project Reporting. The custom application includes HTML, AJAX, and Java Scripting.

Question 3: If the group retained has the capacity to double its size in preparation for larger projects, does that need to be demonstrated in this proposal?

Response 3: The respondent should demonstrate the capacity to adequately perform the services in Section 3.4.

Question 4: Is there any weighting to the Evaluation Criteria?

Response 4: Qualifications of Key Personnel as demonstrated by 3 or more years of job performance. "Key Personnel" will be a defined term and will include the Program and Project Controls Manager and Systems Administrator. — 40%

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Completeness and comprehensiveness of response to this RFQ/P and compliance with the Submission requirements. — 30%

Level, relevance and quality of the proposed MBE/WBE utilization plan. — 20%

Respondent's proven experience, capabilities and resources, at both the corporate and individual levels, in independent, professional Program and Project Control Services during the last 10 years. — 15 %

**Question 5:** Can a Minority or Women Owned Business be a prime?

**Response 5:** Yes

**Question 6:** What M/WBE Certification does the PBC accept?

**Response 6:** The PBC accepts MBE or WBE Certification from the City of Chicago or County of Cook. The firm must be Certified at the time of award to receive credit for participation.

**Question 7:** Does a firm only get credit if a subcontractor is MBE/WBE certified or can the submitting firm receive credit as a M or WBE certified firm?

**Response 7:** The total dollar value of the contract awarded to a certified MBE or WBE will be credited for such participation. PBC encourages MBE or WBE participation at the highest level.

**Question 8:** What role does hard/software play in the transition period?

**Response 8:** The successful respondent will be required to provide strategic guidance on hardware and software. During the transition period, however, hardware and software will be the responsibility of the PBC and its current consultants.

**Question 9:** Is there a PBC organization chart available that outlines the lines of report and authority for the Project Controls Consultant?

**Response 7:** The Consultant will report directly to the PBC's Chief Development Officer and will also provide resources and support to the PBC's Executive and Senior Staff and various departments, including, but not limited to: Operations, External Affairs, Planning, Design, and Construction as demonstrated in attached Exhibit B.

**Question 8:** Is there a sample contract that can be viewed?

**Response 8:** See attached Exhibit C. Please note: this is representative of a sample contract and may be subject to modification including, but not limited to additional terms, conditions, and/or documents, prior to final execution.

**Question 9:** Is there a current list of projects included in the PBC Program?

**Response 9:** The list of active PBC projects is included in Exhibit A. In addition to the active projects listed, the Consultant's services will also be required for projects in close-out, as well as any additional projects that are added to the PBC's Program through its clients during the term of the Contract.

**Question 10:** Is any firm precluded from responding?

**Response 10:** No.

**Question 11:** In the RFQ it states the PBC has an anticipated annual budget of NTE \$750,000 annually. Is that firm?

**Response 11:** The RFQ includes an anticipated annual budget to provide the services outlined in Section 3.4.

**Question 12:** Given there were [a number of] people from the Arcadis team working on this project previously and the PBC wants to have a much smaller crew of consultants this time around, is it PBC's goal to use more of their own in-house staff to handle the work, resulting in the PBC wanting only two key resumes and the budget they have in place.

**Response 12:** The PBC intends to utilize the services of the successful respondent to provide professional guidance, analysis, and recommendations for a successful execution of Program and Project Controls. The successful respondent will be required to work with PBC staff and its consultants to effectuate the services outlined in Section 3. Section 4.22 indicates that the respondent's submission must include resumes of each of the proposed Key Personnel positions identified in Section 3.5. Additionally, Section 4.2.2. indicates that the

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Controls Services Plan must include a comprehensive approach and staffing plan for the required services. Proposed billing rates must be provided for all personnel included in the staffing plan. Proposed managers and other personnel indicated in the staffing plan need not be identified by name but summary level experience and qualifications for individuals in management roles should be described.

Question 13: Please clarify if sub-consultants need to submit information to provide financial capacity (Item VII, page 13 of RFP).

Response 13: Sub-consultants are not required to submit information to provide financial capacity.

Question 14: Please clarify if sub-consultants need to complete Attachment B (Disclosure Affidavit) as part of the submission.

Response 14: Sub-consultants will not be required to complete Attachment B at the time of submission.

Question 15: Please clarify if sub-consultants need to complete Attachment C (Disclosure of Retained Parties) as part of the submission.

Response 15: Sub-consultants will not be required to complete Attachment C at the time of submission.

END OF ADDENDUM NO.1

# Exhibit B

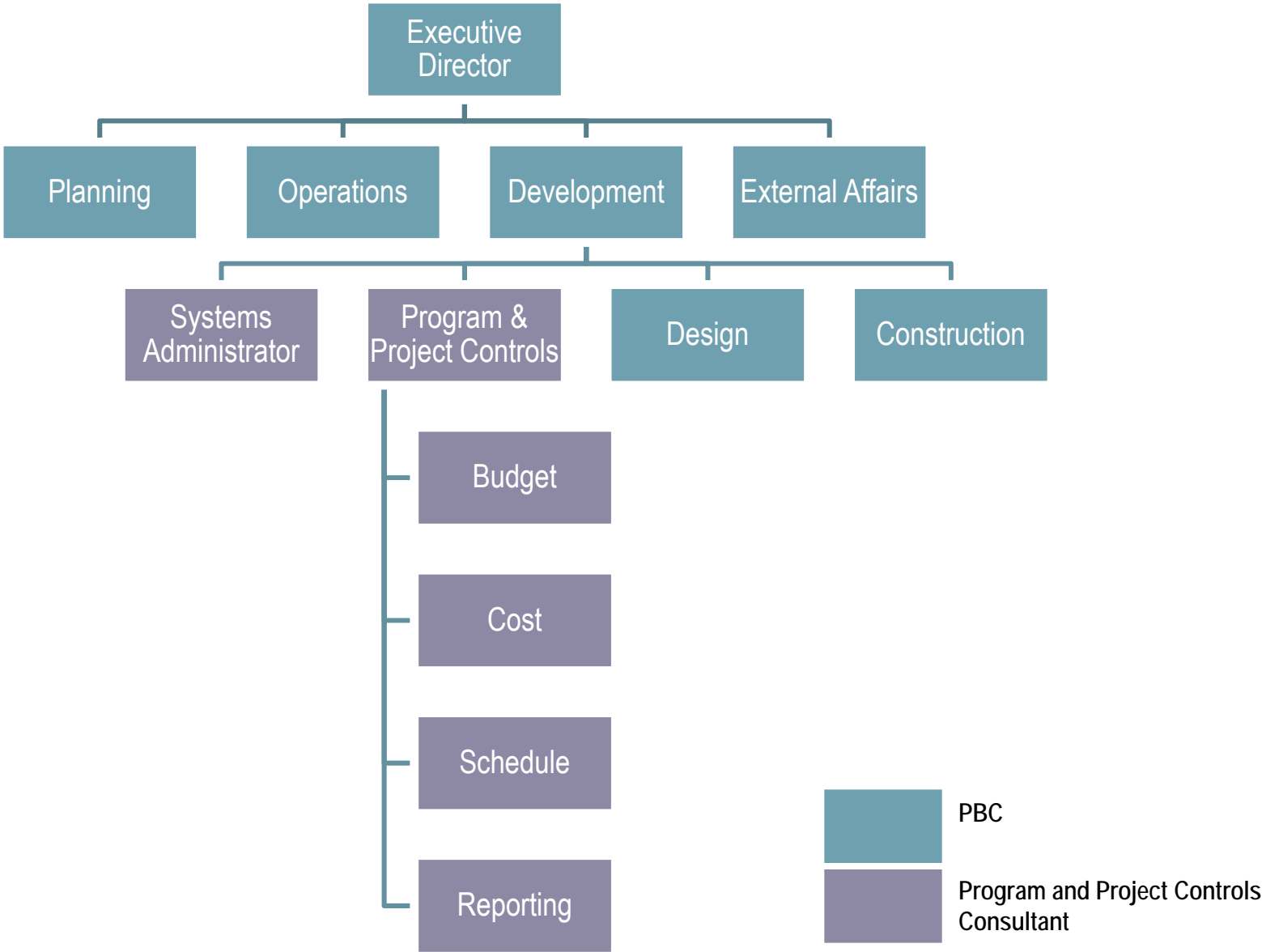


EXHIBIT C

# PROFESSIONAL SERVICES AGREEMENT

PUBLIC BUILDING COMMISSION OF CHICAGO

AND

<PROFESSIONAL SERVICE PROVIDER>

PROGRAM AND PROJECT CONTROLS SERVICES  
CONTRACT NUMBER PS1916



Mayor Rahm Emanuel  
Chairman

Erin Lavin Cabonargi  
Executive Director

Public Building Commission  
Room 200  
Richard J. Daley Center  
50 West Washington Street  
Chicago, Illinois 60602  
(312) 744 - 3090  
[www.pbcchicago.com](http://www.pbcchicago.com)

OCTOBER 15, 2013

PROFESSIONAL SERVICES AGREEMENT BETWEEN COMMISSION AND CONSULTANT

**TABLE OF ARTICLES**

- (1) AGREEMENT
  - (2) GENERAL PROVISIONS
  - (3) DEFINITIONS, USAGE, AND CONVENTIONS
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**ARTICLE 1 - AGREEMENT**

This Professional Services Agreement ("Agreement") is made by and between the Public Building Commission of Chicago, a municipal corporation and body politic organized and operating under the Constitution of the State of Illinois ("Commission" or "PBC") and **XXX** ("Professional Service Provider" or "Provider" or "Consultant") for Project Development and Resource Services ("Services") stated herein with an Effective Date listed on the Execution Page of this Professional Services Agreement.

**ARTICLE 2 - GENERAL PROVISIONS**

2.1 CONSULTANT'S AUTHORITY. The Consultant represents that its execution of the Agreement is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Consultant have been made with complete and full authority to commit the Consultant to all terms and conditions of the Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

2.2 ENTIRE AGREEMENT. The Agreement, and the Exhibits and other Documents attached hereto, constitutes the entire understanding and agreement between the parties to this Agreement and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged in this Agreement. The Agreement may not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties.

2.3 GOVERNING LAW. The Agreement has been negotiated and executed in the State of Illinois and will be construed under and in accordance with the internal laws of the State of Illinois.

2.4 WAIVER. The waiver by either party of any breach of the Agreement will not constitute a waiver as to any succeeding breach.

2.5 NOTICES. 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 Commission or to the Consultant at their respective addresses, as appropriate. 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 second business day after mailing, if given by mail. The Commission or the Consultant 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.

If to the Commission:

Chief Development Officer  
Public Building Commission of Chicago  
50 West Washington, Suite 200  
Chicago, Illinois 60602

If to the Consultant:

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

With a copy to:

Neal & Leroy, LLC  
203 North LaSalle Street, Suite 2300  
Chicago, IL 60601

2.6 NON-LIABILITY OF PUBLIC OFFICIALS. No Commission Board member, employee, agent, officer, or official is personally liable to the Consultant or its subcontractors, and Consultant and its subcontractors are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Consultant or its subcontractors under this Agreement.

2.7 SEVERABILITY. If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the Agreement and such invalidity or unenforceability will not affect any other provision of the Agreement, the balance of which will remain in full force and effect; provided, however, that if such provision is deemed invalid or unenforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

2.8 SUCCESSORS AND ASSIGNS. Except as otherwise provided in the Agreement, the Agreement is binding upon and inures to the benefit of each of the parties to the Agreement and their respective successors and assigns.

2.9 NON-APPROPRIATION OF FUNDS. If funds have not been appropriated in full or in part, the Commission has the right to terminate the Agreement. The Commission will not authorize the Consultant to provide services under this Agreement unless sufficient funds are appropriated to pay for the services.

2.10 EXTENT OF AGREEMENT. This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Commission and the Consultant agree to look solely to each other with respect to the performance of the Agreement. The Agreement and each and every provision are for the exclusive benefit of the Commission and the Consultant and not for the benefit of any third party nor any third party beneficiary except to the extent expressly provided in the Agreement.

2.11 QUALIFICATIONS. The Consultant has consulted with the Commission, reviewed this Agreement, and taken such other actions as the Consultant deemed necessary or advisable to make itself fully acquainted with the scope and requirements of the Services. The Consultant represents that it is qualified and competent by education, training and experience to provide Services in accordance with standards of reasonable professional skill and diligence.

2.12 INCORPORATION OF CONTRACT DOCUMENTS. The documents identified below in this paragraph are hereby incorporated in and made a part of this Agreement. By executing this Agreement, Consultant acknowledges and agrees that Consultant is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services:

- a. Exhibit A – Compensation And Reimbursement Terms
- b. Exhibit B – Key Personnel
- c. Exhibit C – Personnel Approval Form
- d. Exhibit D – Special Conditions For Special Conditions Regarding The Utilization Of Minority And Women Owned Business Enterprises For Professional Services
- e. Exhibit E – Insurance Requirements for Professional Service Contracts
- f. Exhibit F – Disclosure of Retained Parties
- g. Exhibit G - Disclosure Affidavit



2.13 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

2.14 JOINT DRAFTING. The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

2.15 RIGHTS AND REMEDIES. The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

2.16 ELECTRONIC DOCUMENT MANAGEMENT SYSTEM. The Commission requires the Consultant to use the Commission's electronic document management system ("EDMS.") Presently, the Commission uses the McClearn Collaborative Workspace. At the direction of the Commission, if required, the Consultant must follow the EDMS procedures and submit progress reports and other Deliverables through the EDMS System. The Consultant must attend courses and receive training on the EDMS System provided by or on behalf of the Commission. Any costs incurred by Consultant as a result of the attendance of Consultant's personnel at EDMS System courses are not compensable by the Commission. The Commission may, at its sole discretion, utilize an alternative electronic document management system. In the event an alternate electronic document management system is utilized, the Consultant shall comply with the Commission's requirements to utilize the alternate.

NOW THEREFORE, in consideration of the agreements, covenants, representations, warranties, obligations and privileges set forth herein, and intending to be legally bound thereby, Commission and the Consultant, agree as follows:

1. The Recitals and Exhibits set forth above constitute integral parts of this Agreement and are incorporated herein by reference.
2. The Consultant has read and agrees to comply with all provisions of the Resolution passed by the Board of Commissioners of the Commission on June 12, 2012, concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), as the same may be amended from time to time, which Resolution is hereby incorporated in and made a part of this Agreement. By executing this Agreement, Consultant acknowledges and agrees that Consultant is familiar with the contents of such Resolution and will comply fully with all applicable portions thereof in performing the Services.
3. The Consultant has read and agrees to comply with all provisions of the Code of Ethics Resolution passed by the Commission on October 3, 2011, which is available on the Commission's website at [http://www.pbcchicago.com/content/working/ethics\\_policy.asp](http://www.pbcchicago.com/content/working/ethics_policy.asp), and is incorporated into this Agreement by reference.
4. The Consultant agrees to cooperate fully and expeditiously with the PBC's Inspector General in all investigations or audits. The Consultant agrees to provide all documents, data, files and other information and access to all witnesses specified by the PBC's Inspector General. This obligation applies to all officers, directors, agents, partners, and employees of the Consultant. The Consultant agrees to insert this provision in any subcontracts that it awards.

## ARTICLE 3 - DEFINITIONS, USAGE, AND CONVENTIONS

3.1 DEFINITIONS. The following phrases have the same meanings for purposes of this Agreement:

- a. *Agreement* means this agreement to provide Key Personnel, including all exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made in accordance with the terms hereof.
- b. *Commission* as herein referred to shall include the Public Building Commission of Chicago, the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Chief Development Officer, Chief Operating Officer, designated consultant(s), or designated staff of the Commission acting on behalf thereof, as designated by the Commission in writing, for the purpose of giving authorizations, instructions, and/or approval pursuant to this Agreement.
- c. *Consultant* means the company or other entity identified in this agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of this Agreement.
- d. *Day* unless otherwise indicated, the word "day" means calendar day. The phrase "business day" refers to Monday through Friday, except for national holidays.
- e. *Include* shall mean in all its forms, "include, without limitation" unless stated otherwise.
- f. *Key Personnel* means those job titles and persons as identified in those positions as identified in Consultant's proposal and accepted by the Commission.
- g. *Services* means, collectively, the duties, responsibilities and tasks that are necessary to allow the Consultant to provide Key Personnel to the Commission including, but not limited to, project management, , cost management, contract administration, document control, and other resources for the ongoing development of the Commission's projects under this Agreement.
- h. *Sub-consultant* means a firm hired by the Consultant to perform professional services related to providing comprehensive digital construction printing services.
- i. *User Agency* means the municipal corporation that requested the Commission to undertake the construction and/or improvement of the Project.

3.2 TITLES AND GROUPINGS. The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Commission's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions. Terms of one gender imply the other gender(s) unless the context clearly indicates otherwise. Use of the singular includes the plural and vice versa.

## ARTICLE 4 – PROVISIONS FOR ENGAGEMENT

4.1 PERFORMANCE STANDARD. The Consultant represents that the Services required by and performed pursuant to this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent, thorough, and consistent manner in accordance with reasonable professional standards in the field consistent with that degree of skill and care ordinarily exercised by practicing program

management professionals performing services of a scope, purpose, and magnitude comparable with the Services to be provided under this Agreement. The Consultant further promises that it will assign at all times during the term of the Agreement the number of experienced, appropriately trained employees necessary for the Consultant to perform the Services in the manner required by the Agreement.

4.2 LICENSURE. The Consultant must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. The Consultant must maintain current copies of any such licenses and provide these copies upon request by the Commission. The Consultant remains responsible for the professional and technical accuracy of all Services furnished, whether by the Consultant or others on its behalf. All deliverables will be prepared in a form and content reasonably satisfactory to the Commission and delivered in a timely manner consistent with the requirements of the Agreement.

4.3 DEBARRED ENTITIES OR INDIVIDUALS. The Consultant must not use any business or individual who is disqualified by the Commission or debarred under any other governmental agency's procedures to provide the Services under the Agreement.

4.4 FAILURE TO PERFORM. If the Consultant fails to comply with its obligations under the standards of the Agreement, the Consultant must perform again, at its own expense, all Services required to be re-performed as determined by the Commission as a result of that failure. Any review, approval, acceptance or payment for any of the Services by the Commission does not relieve the Consultant of its responsibility to render the Services and deliverables with the professional skill and care and technical accuracy required by the Agreement. This provision in no way limits the Commission's rights against the Consultant either under the Agreement, at law or in equity.

4.5 ENGAGEMENT. The Commission engages the Consultant, and the Consultant accepts the engagement, to provide the Services described in this Agreement, as those Services may be amended by an Amendment to the Agreement as provided below in Section 4.13.

4.6 KEY PERSONNEL. The Consultant shall not reassign or replace Key Personnel without prior written consent of the Commission. The Commission may at any time in writing notify the Consultant that the Commission will no longer accept performance of Services under this Agreement by one or more Key Personnel listed in the Agreement in Exhibit B. Upon that notice Consultant must suspend the Key Personnel from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to the reasonable approval of the Commission. Consultant must request approval from the Commission prior to assigning Key Person or Persons using the Personnel Approval Form (Exhibit C to this Agreement).

4.7 ADEQUATE STAFFING. The Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain for the duration of the Agreement an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. The Consultant must include among its staff the Key Personnel and positions as identified in the Agreement and specified in Exhibit B. The level of staffing may be revised from time to time by notice in writing from Consultant to the Commission and with prior written consent of the Commission.

4.8 NONDISCRIMINATION. In performing under this Agreement the Consultant 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. The Consultant certifies that he/she 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. The Consultant will further furnish such reports and information as may be requested by the Commission, 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.

4.9 EMPLOYMENT PROCEDURES; PREFERENCES AND COMPLIANCE. Salaries of employees of the Consultant, performing work under this Agreement, will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. The Consultant certifies that he/she 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). The Consultant 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 Consultant, out of payments due to the Consultant, 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 Consultant to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

4.10 MBE and WBE CERTIFICATION. At the execution of this Agreement, Consultant shall provide a current certification designating the Consultant as a certified Minority Business Owned Enterprise of Women Owned Business Enterprise. Certification shall only be acceptable to the Commission if issued by the City of Chicago or County of Cook. Consultant acknowledges reviewing Exhibit D of this Agreement and requests for waivers shall be completed as outlined in Exhibit D.

4.11 RECORDS. The Consultant must maintain accurate and complete records of expenditures, costs and time incurred by the Consultant and by consultants engaged by the Consultant in connection with the Project and the Services. Such records will be maintained in accordance with recognized commercial accounting practices, as well as the requirement of the Local Records Act, 50 ILCS 205/1, et. seq. The Commission may examine such records at the Consultant's offices upon reasonable notice during normal business hours.

4.12 COMPLIANCE WITH LAWS. In performing its engagement under the Agreement, the Consultant must comply with all applicable federal, state and local laws, rules, and regulations.

4.13 AMENDMENTS TO THIS AGREEMENT. The Commission may from time to time request changes to the terms and Services of the Agreement. Such changes, including any increase or decrease in the amount of compensation and revisions to the scope or duration of the Services, which are mutually agreed upon by and between the Commission and Consultant, will be incorporated in a written amendment to the Agreement. The Commission will not be liable for any additional payment absent such written amendment.

4.14 REPRESENTATION AND COVENANT BY CONSULTANT. Neither the Consultant nor any affiliate of the Consultant is listed on any of the following lists maintained by the Office 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 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.

4.15 SUBCONTRACT TERMS AND CONDITIONS. Consultant shall include a provision in any and all subcontracts that Consultant may enter into for the performance of the Services that states that the subcontractor shall comply with the terms and conditions of this Agreement in its performance of its portion of the Services. In addition, each subcontract for the performance of the Services shall provide that the Commission is a third-party beneficiary to the subcontract, and may enforce any of the subcontract terms including, but not limited to, those pertaining to standard of performance, indemnity and insurance. Nothing in this Agreement, nor any subcontract to this Agreement, shall state, imply or be construed to state or imply that the Commission or its User Agency are indemnitors or insurers of the Consultant or Consultant's subcontractors. Engagement of a sub-consultant or sub-contractor shall require the prior written approval of the Commission.

## **ARTICLE 5 - TERM AND COMPENSATION**

5.1 INITIAL TERM. The initial term of this Agreement is for (2) years and shall commence on the 12<sup>th</sup> day of November, 2013 and expire on the 11<sup>th</sup> day of November, 2015 and subject to the provisions in this article.

5.1.1 The Commission may, at its sole option, amend this Contract to add on (2) successive (1) year term ("Additional Terms"). Unless otherwise stated in the Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The Commission shall give Consultant thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

5.1.2 For the first (90) days of this Agreement, the Consultant shall provide Key Personnel (as approved by the Commission) calculated on a (40) hour work week. In the event the Commission determines that Key Personnel are not needed to provide the Services herein, the Commission shall notify the Consultant (30) days prior to the effective date of such reduction in personnel as provided in Section 4.7.

5.2 TERMINATION BY THE COMMISSION. The Commission has the right, at any time, to terminate this Agreement in whole or in part, with or without cause, by written notice given to the Consultant at least (30) days before the effective date of termination. So long as the Consultant is not in default under this Agreement at the time of termination, the Commission will pay the Consultant, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Consultant for periods up to the effective date of termination. The Commission may exercise any right of set-off against amounts due to Consultant under this Section for amounts which the Commission believes in good faith are attributable to the Consultant's failure to properly perform in accordance with this Agreement.

5.3 SUSPENSION BY THE COMMISSION. The Commission also has the right, at any time and from time to time, with or without cause, to suspend the performance of the Consultant hereunder with respect to all or any part of the Services, by written notice given to the Consultant at least (15) days before the effective

date of suspension. During the notice period the Consultant must wind down its Services. So long as the Consultant is not in default under this Agreement on the effective date of the suspension, the Commission will pay the Consultant, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Consultant for periods up to the effective date of suspension.

5.3.1 During the period the Consultant's performance is suspended, the Consultant is not entitled to incur fees or bill the Commission, except for Consultant's time for participating in substantive meetings concerning the Project (but not for meetings to discuss Consultant's invoices or claims). The Consultant may bill such time spent during a suspension only if the Consultant's participation is requested by the Commission and only for the time of one individual per meeting. Commission will pay for such time at the applicable hourly billing rate set forth in Exhibit B. Participation in meetings at the request of the Commission is not considered to be resumption of the Consultant's Services.

5.3.2 If the Consultant is required to resume its Services under this Agreement, the Commission will notify the Consultant in writing, giving the Consultant a reasonable period not to exceed (10) days to remobilize itself. The Consultant may bill for time spent on remobilization. The Commission will pay for such remobilization as is reasonable and billed at the hourly rate for one senior manager or less at the hourly billing rate set forth in Exhibit B. The number of days during which the suspension period lasted, including any remobilization time, will be added to the term of the Agreement set forth in Section 5.01 above, and the Consultant will re-commence its Services at the point they were suspended and may resume billing in accordance with the terms of the Agreement.

5.4 EFFECT OF TERMINATION OR SUSPENSION. Termination or suspension of this Agreement in whole or in part does not relieve the Consultant from liability for its performance of any obligation under this Agreement that was performed or was to have been performed by the Consultant on or before the effective date of termination or suspension. In no event will the Commission be liable to the Consultant for any loss, cost or damage, including lost profits, which the Consultant or any other party may sustain by reason of the Commission terminating or suspending this Agreement in accordance with the provisions of this Agreement.

5.5 FORCE MAJEURE. 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. 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. 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 Consultant under the 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 Consultant is not in default of any obligation of the Consultant under the Agreement, the Commission will pay to the Consultant, according to the terms of the Agreement, all compensation and reimbursements due to the Consultant for periods up to the effective date of suspension.

5.6 COMPENSATION AND REIMBURSEMENT. The Commission will compensate the Consultant for the Services in the amount and manner set forth in Exhibit A.

## **ARTICLE 6 - RIGHTS AND OBLIGATIONS OF COMMISSION**

6.1 GENERAL AND SPECIFIC. In connection with the administration of the Commission and the performance of the Agreement by the Consultant, the Commission has the following rights and obligations, in addition to those provided elsewhere in the Agreement:

6.1.1 INFORMATION. The Commission will provide the Consultant all information reasonably requested and required concerning the Commission's requirements for the Services.

6.1.2 REVIEW OF DOCUMENTS. Subject to the provisions of the Agreement, the Commission will make reasonable efforts to examine documents submitted by the Consultant and render decisions pertaining to them with reasonable promptness.

6.1.3 INDEMNIFICATION BY THIRD PARTIES. The Commission shall require by appropriate provision in each contract entered into after the date of this Agreement, that the consultant or contractor thereunder defend, indemnify, keep and save harmless the Commission, the User Agency and the Consultant, and each of them, and their respective commissioners, board members, officers, officials and employees, and that each consultant or contractor thereunder shall purchase and maintain such insurance as the Commission may require.

6.2 AUDITS. The Commission has the right to abstract and audit the books of the Consultant and its subcontractors on all subjects relating any of the Commission's project and/or the Services.

6.3 OWNERSHIP OF DOCUMENTS. All documents, data, studies and reports prepared by the Consultant or any party engaged by the Consultant, pertaining to the Services will be the property of the Commission. Consultant shall provide the Commission with opportunity to review all such documents and shall provide copies to the Commission upon written request.

## **ARTICLE 7 - INDEMNIFICATION AND INSURANCE**

### Section 7.1

- a. Professional Indemnity. For claims alleging professional negligence, the Consultant must defend, indemnify and hold the Commission and the User Agency and their respective commissioners, board members, officers, officials and employees (hereafter the Indemnified Parties) free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, court costs and expert's fees, that may arise out of the Consultant's negligent acts, errors and omissions and misconduct in the Consultant's performance under this agreement or the performance of any Subcontractor retained by the Consultant in connection with this agreement.
- b. General Indemnity. For all other claims, the Consultant must protect, defend, indemnify, hold the Commission and the User Agency and their respective commissioners, board members, officers, officials and employees (hereafter the Indemnified Parties) free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, court costs and expert's fees, that may arise out of or be based on any injury to persons or property that is, or is claimed to be, the result of the Consultant's performance under this agreement or any Subcontractor retained by the Consultant in connection with this agreement.
- c. The indemnification obligations provided in this Article VIII will be effective to the maximum extent permitted by law. This indemnity extends to all legal costs, including, without limitation: attorney fees, costs, liens, judgments, settlements, penalties, professional fees or other expenses incurred by the Indemnified Party(ies), including but not limited to reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section will survive the expiration or termination of this Contract. For claims subject to the general indemnity, the Consultant shall be solely responsible for the defense of any and all

claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractor, agents or servants of the Consultant even though the claimant may allege that the Indemnified Parties were in charge of the Services or allege negligence on the part of the Indemnified Parties. The Indemnified Party/Parties will have the right, at its sole option, to participate in the defense of any such suit, without relieving the Consultant of its obligations hereunder.

To the extent permissible by law, the Consultant waives any limits to the amount of its obligations to indemnify or contribute to any sums due pursuant to Consultant's obligations. Notwithstanding the forgoing, nothing in this Article VIII obligates the Consultant to indemnify an Indemnified Party for the Indemnified Party's own negligence or willful misconduct. Defense costs shall be allocated on a comparable fault basis.

7.2 INSURANCE. The Consultant will purchase and maintain at all times during the performance of Services, for the benefit of the Commission, the User Agency and the Consultant, insurance coverage which will insure the Commission, the User Agency and the Consultant as set forth in Exhibit E to this Agreement.

## **ARTICLE 8 - DEFAULT**

8.1 EVENTS OF DEFAULT. Each of the following occurrences constitutes an Event of Default by the Consultant under the Agreement:

8.1.1 The material failure or refusal on the part of the Consultant to perform any obligation or agreement on the part of the Consultant contained in the Agreement, which failure or refusal continues for a period of 10 days (or such longer period as the Commission, in its 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 Consultant by the Commission; or

8.1.2 Any representation or warranty of the Consultant set forth in this Agreement or otherwise delivered pursuant to the Agreement will have been false in any material respect when so made or furnished; or

8.1.3 The Consultant 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; or

8.1.4 Any proceeding is commenced against the Consultant 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 Consultant's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Consultant or of all or any substantial part of the Consultant's assets and properties, and such appointment will not have been vacated, stayed, discharged, bonded or otherwise dismissed within 60 days of the appointment.

8.1.5 The Consultant's material failure to perform any of its obligations under the Agreement, which failure or refusal continues for a period of 10 days (or such longer period as the Commission, in its 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 Consultant by the Commission, including any of the following:

- .1 Failure due to a reason or circumstance within the Consultant's reasonable control to perform the Services with sufficient personnel, and equipment or with sufficient material to ensure the performance of the Services; or
- .2 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; or
- .3 Failure to promptly re-perform within a reasonable time the Services that were rejected as erroneous or unsatisfactory per the terms of this Agreement; or
- .4 Discontinuance of the Services for reasons within the Consultant's reasonable control; or
- .5 Failure to comply with a material term of the Agreement, including the provisions concerning insurance and nondiscrimination.
- .6 Any change in ownership or control of the Consultant (as defined in Article XI) without prior written approval of the Executive Director, which approval the Executive Director will not unreasonably withhold.

8.1.6 The Consultant's default under any other agreement it presently may have or may enter into with the Commission, the City of Chicago, the Chicago Public Schools, the County of Cook, the Metropolitan Water Reclamation District of Greater Chicago, or the Chicago Park District. Consultant acknowledges that in event of a default under this Agreement with the Commission may also be deemed a default under any such other agreements.

8.1.7 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 the Agreement upon ten (10) days written notice to the Consultant, in which event the Commission has no further obligations hereunder or liability to the Consultant except as to payment for Services actually received and accepted by the Commission through the effective date of termination, subject to set off of amounts which the Commission in good faith believes are attributable to the Consultant for failure to properly perform its services in accordance with this Agreement. 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.

8.2 REMEDIES NOT EXCLUSIVE. No right or remedy in the Agreement conferred upon or reserved to the Commission or the Consultant 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 the 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.

## **ARTICLE 9 - CLAIMS AND DISPUTES**

9.1 GENERAL. All Claims 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 compensation, and all claims for alleged breach of contract will be resolved in accordance with the following dispute resolution processes.

9.2 DISPUTE RESOLUTION. The Commission and Consultant agree to cooperate in resolving any claims, controversies or disputes (collectively, "Dispute" or "Disputes") that may arise out of or relate to the Agreement, the breach thereof, or the Services.

9.3 CONTINUING SERVICES. The Commission and Consultant agree that the Services will not be stopped or slowed in any way during the pendency of any Dispute, provided that all monies owed for the Services not in dispute are timely paid pursuant to this Agreement. Consultant shall continue to perform the Services pending final resolution or determination thereof, unless requested by the Commission to suspend the Services, provided that the Commission continues to pay Consultant for all Services not subject to a Dispute.

9.4 STEP NEGOTIATIONS. In the event a Dispute is not resolved or a party asserts a demand in writing to the other party claiming that party has breached this Agreement, the parties shall attempt in good faith to resolve the Dispute promptly by negotiation, as follows. Any party may give the other party written notice of any Dispute not resolved in the normal course of business. The Commission and Consultant agree to meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as reasonably necessary, to attempt to resolve the Dispute. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) working days' notice and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of all rules of evidence. If the matter is not resolved within thirty (30) days from the written notice, or if no meeting takes place within fifteen (15) days after such notice, either party may initiate mediation as provided herein.

9.5 MEDIATION. All Disputes that cannot be resolved by the parties under Section 9.4 shall initially be submitted to mediation in Chicago, Illinois before a mediator that is agreeable to both parties, and which is conducted according to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association then in effect. Submission to mediation is a precondition to arbitration as set forth below. The parties will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator, will assert no claims against the mediator as a result of the mediation, and will hold the mediator harmless from claims by third parties arising out of or relating to the mediation provided for in this Section. If the Dispute is not resolved by the earlier of thirty (30) days after the last mediation session or ninety (90) days after the mediation demand, either party may initiate arbitration as follows.

9.6 ARBITRATION. All Disputes not resolved under Sections 9.4 or 9.5 shall be decided by confidential, binding arbitration in Chicago, Illinois and in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") then in effect. Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the AAA. The demand must be made within a reasonable time subsequent to the failure of mediation to achieve resolution of the Dispute.

9.6.1 Each party shall be entitled to depose no more than three fact witnesses for no longer than three hours each. Each party shall be entitled to depose any and all retained expert opinion witnesses for no longer than four hours each. Each party shall produce to the other all non-privileged records relating to the Work that have relevant information or are reasonably calculated to lead to the discovery of relevant information relating to the Dispute. The Arbitrator shall resolve all discovery disputes. The Arbitrator may modify these discovery limitations for good cause shown.

9.6.2 The Arbitrator shall have the authority to order specific performance, including, without limitation, interim injunctive relief prior to the Dispute being resolved. The Arbitrator shall have the authority to decide all issues concerning the fulfillment of any condition precedent to the arbitrability of a claim or defense, the amount of damages to be awarded, if any and the arbitrability of the issues presented. The Arbitrator is not empowered to award damages in excess of compensatory damages, such as punitive damages. Notwithstanding anything to the contrary, the term "Arbitrator"

as used herein shall consist of one arbitrator, regardless of the size of the claim or counterclaim. An arbitrator eligible to hear the Dispute shall have at least five years of experience as an arbitrator with the AAA and/or another neutral organization, be familiar with commercial practices, and be a practicing lawyer.

9.6.3 At either party's option, third parties who are subject to a valid arbitration agreement with the party seeking joinder may be joined in the arbitration by consolidation, joinder or otherwise.

9.6.4 The award of the Arbitrator shall be enforceable in any court of competent jurisdiction in Cook County, Illinois, and each party consents and submits to the jurisdiction of such court for purposes of such action.

9.7 **CONSULTANT SELF-HELP PROHIBITED.** The Consultant must never withhold performance of its Services by, for example, refusing to review and approve appropriately submitted invoices or pay applications, timely to make recommendations on general contractor claims, or promptly to issue other appropriate approvals needed by others where doing so would potentially harm third parties, such as subconsultants, the general contractor, or its subcontractors. Doing so to gain potential leverage in negotiating or settling the Consultant's claims against the Commission or User Agency will constitute bad faith on the Consultant's part. This provision is not intended to prohibit the Consultant from exercising its well-considered professional judgment, however, in carrying out its duties and responsibilities under the Agreement, and is not intended to prevent the Consultant from exercising the rights and remedies available to it by law or under this Agreement.

#### **ARTICLE 10 - CONFIDENTIALITY**

All of the reports, information, or data prepared or assembled by the Consultant under the Agreement are confidential, and except as may be necessary to perform its services, as required by law, or as necessary to establish a claim or defense in any adjudicatory or dispute resolution proceeding, the Consultant must not make such reports, information or data available to any party without the prior written approval of the Commission, such approval not to be unreasonably withheld. In addition, the Consultant must not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning the Agreement, the Project or the Services. If the Consultant is served with a subpoena requiring the production of documents or information which is deemed confidential, the Consultant will promptly notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.

#### **ARTICLE 11 - ASSIGNMENT**

The Consultant acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of the Consultant and, therefore, that neither the Agreement nor any right or obligation in the Agreement may be assigned by the Consultant, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Consultant undergoes a change in control, the change in control is deemed an assignment of the Agreement; a change in control is defined as a transfer of more than 50% of the equity ownership of the Consultant during any 12-month period. In the event of an assignment by the Consultant without the prior written approval of the Commission, the Commission will have the right to immediately terminate the Agreement without fault or responsibility. The Consultant further acknowledges that the Consultant represented to the Commission the availability of certain members of the Consultant's staff who will be assigned to Project; therefore, in the event of the unavailability of such members for any reason, the Consultant must so notify the Commission in writing, and must assign other qualified members of the Consultant's staff, as approved by the Commission, to the Project.

## **ARTICLE 12 - CRIMINAL AND BACKGROUND CHECKS**

12.1 GENERAL. If required by the Commission, this Article shall apply to all proposed Key Personnel. Generally, the Commission anticipates criminal and background checks to be performed on those individuals of the Consultant (and subconsultants) who has or will have direct contact with children on a regular and continuing basis in connection with performance of any Services pursuant to this Agreement. The Consultant shall conduct all criminal history and background checks required by law. All required checks must be completed *prior to* the Consultant submitting a Personnel Approval Form to the Commission.

12.2 The Consultant SHALL:

12.2.1 Verify the identity of all individuals subject to criminal and background checks by viewing a current government issued picture identification;

12.2.2 Conduct Child Abuse Registry checks in the state of Illinois and all states of residency in the past five (5) years;

12.2.3 Conduct Criminal History checks with the state of Illinois and all states of residency in the last five (5) years;

12.2.4 Review Results of Criminal and Child Abuse Background Checks and take appropriate action.

12.3 In the event a criminal history or background check required herein produces any record concerning the subject of a check that would be a ground for denial of his/her ability to provide services and/or perform activities pursuant to this Agreement and the Consultant chooses to retain such person(s), that decision may be considered a material breach of this Contract.

**EXECUTION PAGE FOLLOWS**

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**<Execution Page for Design-Build Agreement between Public Building Commission of Chicago and  
XXX with an Effective Date of XXX>**

This Agreement is executed by the Parties stated below, and made effective by such execution pursuant to its terms.

**PUBLIC BUILDING COMMISSION OF CHICAGO**

By: \_\_\_\_\_  
Rahm Emanuel, Chairman

By: \_\_\_\_\_  
Erin Lavin Cabonargi, Executive Director

By: \_\_\_\_\_  
Lori Ann Lypson, Secretary

Approved as to Form and Legality:

By: \_\_\_\_\_  
Neal & Leroy, LLC

**XXX**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

County of \_\_\_\_\_  
State of Illinois

AFFIX CORPORATE  
SEAL, IF ANY, HERE

Subscribed and sworn before me by \_\_\_\_\_

as \_\_\_\_\_ of \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_.