

GUARANTEED ENERGY PERFORMANCE CONTRACT

THIS GUARANTEED ENERGY PERFORMANCE CONTRACT (this "**Contract**") is made and entered into this 24 day of Aug, 2016, between the Public Building Commission of Chicago ("**Customer**" or "**PBC**" or "**Commission**") and NORESKO, LLC ("**ESCO**" or "**Energy Service Company**" or "**NORESKO**" or "**Contractor**").

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth herein, the Parties agree as follows:

SECTION 1. RECITALS.

A. The Customer, on behalf of its client, the Metropolitan Water Reclamation District of Greater Chicago ("**Client**" or "MWRD" or "**Owner**") desires that the ESCO implement energy management and energy-related capital improvement services at the waste water treatment plants owned or operated by the Client and identified in Schedule A to each Task Order (collectively "**Facilities**" and each a "**Facility**").

B. The ESCO's implementation of energy management and energy-related capital improvement services at the Facilities will involve the building analysis, design, engineering, installation, repairs, retrofit, performance monitoring, guarantee reconciliation, and training services more fully described in the "Project Description" attached to each Task Order as Schedule A and the other terms and provisions of this Contract (the "**Project**"). The Project Description specifically describes the energy conservation measures and related services ("**ECMs**", and each, an "**ECM**") which the ESCO proposes to install at the Facilities.

C. The ESCO has agreed to provide a performance guarantee in the form attached to each Task Order as Schedule B (the "**Performance Guarantee**") guaranteeing the energy savings to the Customer resulting from the acquisition and installation of the ECMs and providing that the ESCO will reimburse the Customer for any shortfall of the savings guaranteed in the Performance Guarantee.

D. The ESCO desires to undertake the Project and provide the Performance Guarantee all in accordance with the terms and provisions of this Contract and the other Contract Documents.

E. The Agreement is subject to compliance with MWRD Required Terms and Conditions as set forth in Exhibit D.

SECTION 2. DEFINITIONS; RULES OF CONSTRUCTION.

A. Definitions. All capitalized terms used in this Contract shall have the meaning set forth below, or in Schedule B to each Task Order:

1. "**ACM**" (Asbestos Containing Material) means any material containing more than one percent asbestos and is described in Section 10.A.
2. "**Certificate of Insurance**" means a document issued by an insurance company/broker that is used to verify the existence of insurance coverage and limits under specific conditions granted to listed individuals.

3. **"Change Order"** means a written change in the Project executed by both Parties that, pursuant to Section 12, specifies changes in the Contract Services and, if applicable, changes in the Contract Sum and Contract Time.
4. **"Client"** means Metropolitan Water Reclamation District of Greater Chicago ("MWRD" or "Owner").
5. **"Commission Representative"** means the person or entity employed or retained by the Public Building Commission of Chicago (PBC) authorized to act on behalf of the PBC either to accept, reject or otherwise facilitate the orderly execution of the Contract Services and is described in Section 5.A.
6. **"Commissioning"** means process by which installed equipment is tested to verify if it functions according to its design objectives or specifications.
7. **"Confidential Information"** means any documentation or information (i) which is marked as "proprietary" or "confidential"; (ii) which is supplied orally with a contemporaneous confidential designation; or (iii) which is known by either Party to be confidential or proprietary information or documentation of the Customer or Client. Confidential Information does not include information that can be demonstrated: (i) to have been rightfully in the possession of either Party from a source other than the other Party prior to the time of disclosure of said information to the Party under this Contract; (ii) to have been in the public domain prior to disclosure to the Party; (iii) to have become part of the public domain after disclosure to the Party by a publication or by any other means except an unauthorized act or omission or breach of this Contract on the part of the ESCO or the Customer; or (iv) to have been supplied to the Party without restriction by a third party who, to the Party's knowledge, is under no obligation to maintain such information in confidence.
8. **"Concealed Condition"** means ACM, Hazardous Materials, or other physical conditions (i) that was not identified in the Contract Documents, or otherwise, prior to the commencement of the Work or (ii) that could not have been identified by the ESCO through the exercise of reasonable diligence during the performance of the Investment Grade Audit.
9. **"Construction Schedule"** means the ESCO's construction schedule for the Work that includes, without limitation, a schedule related to the Task Order Work, and that provides for expeditious and practicable execution of all aspects of the Work, updated from time to time as permitted by this Contract.
10. **"Contract Documents"** means this Contract with the Task Orders, Exhibits, Schedules, Attachments, the Design & Engineering Documents (once accepted by the Customer as provided in Section 6.B), the Construction Schedule, any Change Orders, the other documents listed in this Contract and any modifications to the foregoing documents issued after execution of this Contract.
11. **"Contract Services"** means the Work and the Guarantee Period Services.

12. “**Contract Sum**” means the amount the Customer will pay the ESCO for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon this ESCO pursuant to this Contract, other than the Performance Tracking Services, authorized by each fully executed Task Order, subject to additions and deductions by Change Order as provided in this Contract.

13. “**Contract Time**” means the period of time from the Date of Commencement until the end of the Guarantee Term, as defined in Schedule B of each Task Order. The Contract Time consists of the Installation Period and the Guarantee Period.

14. “**Customer Representative**” means the person or entity employed or retained by the Public Building Commission of Chicago (PBC) authorized to act on behalf of the PBC either to accept, reject or otherwise facilitate the orderly execution of the Contract Services and is described in Section 5.A.

15. “**Date of Commencement**” is the date designated on each individual Task Order’s Notice to Proceed authorizing the commencement of the Task Order Work.

16. “**Design & Engineering Documents**” means working drawings and specifications prepared by the ESCO for written approval by Customer setting forth in detail the requirements of the construction and installation of the Project in accordance with the Contract Documents.

17. “**Design Materials**” means drawings, specifications, designs, plans, “architectural work” (as such term is defined in the Architectural Works Copyright Protection Act of 1990) and other documents, prepared by or on behalf of the Customer, the ESCO, and/or Subcontractors in connection with the Project or the Contract Services.

18. “**Dispute**” means claims, disputes or other controversies arising out of, or relating to, this Contract.

19. “**ECMs**” and each, an “**ECM**”, means the energy conservation measures and related services which the ESCO proposes to install at the Facilities.

20. “**Engineer**” means a MWRD resident engineer.

21. “**Engineer Neutral**” means a third party professional engineering firm authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Design & Engineering Documents or the execution and/or completion of the Work embodied in the Design & Engineering Documents as it relates to the determination of Substantial Completion.

22. “**Environmental Consultant**” means a consultant engaged by the Customer to provide environmental assessments and to perform Environmental Work.

23. “**Environmental Incentives**” means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements

of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and the reduction of energy usage at the Facilities, to the extent provided or permitted by applicable law. Without limiting the forgoing, Environmental Incentives include utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

24. “**Environmental Work**” means any services or work involving removal, cleanup, or other remedial action in connection with a Hazardous Material or Mold.

25. “**ESCO Representative**” means an appointed principal representative of the ESCO who shall be the ESCO’s authorized representative, and who shall receive and initiate all communications to and from the Customer and be authorized to render binding decisions related to the Contract Services.

26. “**Excusable Event**” means a legitimate excuse for the failure of a party to take required action, which is adequately described in Section 12.J.

27. “**Facilities**” and each, a “**Facility**”, means the waste water treatment plants owned or operated by the Client.

28. “**Field Order**” means a written order signed by the Commission Representative and the ESCO directing changes in the Work or the Project CPM Schedule. Field Orders may be issued for changes within the character of the Work that do not impact the Guaranteed Annual Savings Amount.

29. “**Final Acceptance**” means the date on which the Customer has determined, in consultation with the Client and the ESCO, that all of the requirements of the Contract Documents for a Task Order or for a particular ECM have been completed.

30. “**Final Acceptance Date**” means the date on which all remaining contract requirements must be completed after Substantial Completion. The Customer has determined, in consultation with the Client and the ESCO, that all of the requirements of the Contract Documents for each Project Task Order or for a particular ECM have been completed.

31. “**Final Acceptance Certificate**” means a certificate in writing provided to the ESCO by the Customer stating that Final Acceptance has occurred and identifies the Final Acceptance Date

32. “**Financing Contract**” means a contract or contracts, or other financing vehicle, that may be entered into by the Customer for the financing of the Project.

33. “**Generally Accepted Accounting Principles**” or “**GAAP**” means the uniform accounting and reporting procedures set forth in the opinions, pronouncements and publications of the American Institute of Certified Public Accountants and the

Financial Accounting Standards Board or in such other statements by such other entity as may be of general use by significant segments of the accounting profession as in effect on the date of this Contract.

34. "**Guarantee Period**" means the period of time from the Savings Guarantee Commencement Date, as defined in each Task Order, until the end of the Guarantee Term.

35. "**Guarantee Period Services**" means the performance guarantee, monitoring, Project modification, guarantee reconciliation, Performance Tracking Services, and other services to be performed during the Guarantee Period as described in Schedule B, C, and D of each Task Order.

36. "**Guaranteed Annual Savings Amount**" means the amount of savings calculated annually due to the reduction of energy and operating costs of a facility, or a group of facilities by a specified amount. These amounts are defined in Schedule B of each Task Order.

37. "**Hazardous Material**" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any applicable law.

38. "**Implementation Plan**" means the written outlined description of the process for executing the Task Order Work. Implementation Plan is required to be within each Authorized Task Order under Schedule A-1-3: Implementation Plan.

39. "**Installation Period**" means the period of time from the Date of Commencement until Final Acceptance of the Task Order.

40. "**Intellectual Property Rights**" means any patents, copyrights, trademarks, service marks issued under United States law.

41. "**Investment Grade Audit**" means the report prepared by the ESCO that sets forth, among other things, (a) an assessment of the energy consumption characteristics of each Facility, (b) specific energy analysis related to each Facility and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Facilities.

42. "**Licensed Professionals**" means any subcontractors that are architects(s) and engineer(s) or professional firm(s) in each case licensed or registered to provide architectural and engineering services in Illinois.

43. "**Manufacturers' Warranties**" means all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work for that ECM.

44. "**Mold**" means any type or form of fungus or similar biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing.

45. "**Notice to Proceed**" means written notice from the Customer to the ESCO authorizing the commencement of the Work defined in each Task Order.

46. "**OCDM System**" means On-line Collaboration and Document Management System. The ESCO shall use the OCDM System to: track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission. The OCDM System shall be the mode of conveyance and repository for all Project-related documents. The ESCO shall post all Project-related documents to the OCDM System as directed by the Commission. At ESCO's request, the Commission shall provide ESCO training on the OCDM System.

47. "**Owner**" means Metropolitan Water Reclamation District of Greater Chicago ("**MWRD**" or "**Client**")

48. "**Parties**" means the ESCO and the Customer. "**Party**" means either the ESCO or the Customer.

49. "**Performance Guarantee**" means a guarantee of energy savings to the Customer resulting from the acquisition and installation of the ECMs and providing that the ESCO will reimburse the Customer for any shortfall of the savings guaranteed in the Performance Guarantee.

50. "**Performance Tracking Services**" means those services provided by the ESCO to measure and verify the performance of the ECMs. The detailed methodology of Performance Tracking Services are described in Schedule C of each Task Order. Additional optional Performance Tracking Services, beyond those included in the Task Order Work, are described in optional Task Order Schedule F - Performance Tracking Services and Task Order Schedule G - Performance Tracking Services Payments.

51. "**Performance Tracking Services Payment**" means annual payments to the ESCO for the Performance Tracking Services during the Guarantee Period commencing on the Savings Guarantee Commencement Date and continuing until the expiration or earlier termination of this Contract.

52. "**Professional Standard**" means performance of the Contract Services with that degree of skill, care and diligence normally shown by (and generally accepted as being appropriate for) nationally recognized design, engineering, and construction professionals performing services and work of a scope, purpose and magnitude comparable with the Contract Services.

53. “**Project**” means the ESCO’s implementation of energy management and energy-related capital improvement services at the Facilities will involve the building analysis, design, engineering, installation, repairs, retrofit, performance monitoring, guarantee reconciliation, and training services more fully described in the “Project Description” attached to each Task Order as Schedule A and the other terms and provisions of this Contract.

54. “**Project Description**” is a narrative and quantitative summary attached to each individual Task Order as Schedule A that outlines the Work that is to be provided by the ESCO.

55. “**Project Participation Guidelines**” are those specific guidelines applicable to Customer projects and attached as Exhibit E hereto.

56. “**Records**” means books, records, documents and other evidence, whether in electronic or paper format, pertaining to the performance and cost of the Contract Services.

57. “**Retention Period**” means the period the ESCO must maintain Records after the termination of this Contract.

58. “**Schedule**” means the critical path method (CPM) schedule submitted by the Contractor establishing time frames for the performance of components of the Work.

59. “**Schedule of Values**” means a detailed statement attached to each Task Order as Schedule A-1-4 that itemizes contract sum subcomponents and their values. The Schedule of Values is used as the basis for submitting and reviewing progress payments.

60. “**Scheduled Completion Dates**” means the Substantial Completion Date(s) and Final Acceptance Date(s).

61. “**Senior Officer**” means (i) the chief operating officer or executive director of the Customer or (ii) the chief executive officer, president or any executive vice president of the ESCO, or anyone appointed by such persons to act on their behalf.

62. “**Subcontractor**” means any partnership, firm, corporation or entity other than an employee of ESCO, who contracts with the ESCO to furnish services, labor, materials, or labor and materials at any Facility or otherwise in connection with the Project. This term also includes subcontractors of any tier, suppliers, fabricators or manufacturers, whether or not in privity with the ESCO.

63. “**Substantial Completion**” means the date that is the later of the following: (i) the Customer has determined, in consultation with the ESCO, the Work for the Project or a particular ECM is sufficiently implemented in accordance with the Contract Documents, including commissioning of any systems required by the Contract Documents, so that the Customer may utilize the Project or the ECM for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections which do not interfere with the Customer’s use and occupancy of the Project

or ECM; or (ii) if the nature of the Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy.

64. “**Substantial Completion Date**” means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

65. “**Task Order**” means a document executed by the Commission and ESCO that authorizes in writing Services and/or Deliverables to be provided by the ESCO. Each Task Order shall include the Schedules listed in Section 17 (O) of this Contract setting forth the details of each phase. Each Phase shall be independent and have its own Contract Time, Commencement Date, Installation Period, Guarantee Period, Fees, and its own schedule and dates for Substantial Completion and Final Acceptance. Issuance of Task Order does not authorize work to commence. Should the ESCO commence work prior to the issuance of a Notice to Proceed, the PBC will not be responsible for costs incurred for work not authorized to proceed.

66. “**Training**” means one-on-one or classroom instruction provided by the ESCO to help Client employees attain a level of knowledge or skill required to successfully operate or maintain the equipment installed as part of the Task Order Work. Specific description of Training is to be outlined within each Authorized Task Order under Schedule A-1-2: Training.

67. “**Utilization Plan Submission**” means the statement of Compliance participation goals for Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), and Small Business Enterprise (SBE).

68. “**Warranty**” means the ESCO warrants to the Customer that materials and equipment furnished under this Contract will be of good quality and new, that the Work will be performed in accordance with the Professional Standard and free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Customer.

69. “**Warranty Period**” is defined in Section 8.C. and means the warranty period for the Work and is the period that is the twelve (12) months, running on an ECM by building basis from and after the date of Substantial Completion of such ECM or portion thereof.

70. “**Work**” means the work and services required by the Contract Documents during the Installation Period and during any period of time during which the ESCO is required to correct or replace its work and services pursuant to this Contract and includes all labor, materials, equipment and services provided or to be provided by the ESCO to fulfill the ESCO’s obligations under this Contract.

B. Rules of Construction.

1. Grammatical Usage and Construction. In construing this Contract, pronouns include all genders and the plural includes the singular and vice versa.

2. Headings. The headings, titles, and captions in this Contract have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Contract.

3. Calendar Days. Unless otherwise provided in this Contract, any reference in this Contract to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Contract falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

4. Priority of Contract Documents. In the event of a conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of such documents:

- a. Contract Amendments;
- b. This Contract;
- c. Change Orders (to the Contract and Task Orders);
- d. Task Orders;
- e. The Design & Engineering Documents.

SECTION 3. CONTRACT TIME AND PROJECT SCHEDULE.

A. Contract Time. The "**Contract Time**" is the period of time from the Date of Commencement until the end of the Guarantee Term, as defined in Schedule B of each Task Order. The Contract Time consists of the Installation Period and the Guarantee Period. The "**Installation Period**" is the period of time from the Date of Commencement until Final Acceptance of the entire Project. The "**Guarantee Period**" is the period of time from the Savings Guarantee Commencement Date, as defined in Schedule B of each Task Order, until the end of the Guarantee Term.

1. **Phasing of Project Implementation.** The Parties agree that the work identified during the Investment Grade Audit may be implemented in multiple phases. Each phase of work will be authorized by execution of a Task Order, substantially in the form attached hereto as Exhibit A. Each Task Order shall include the Schedules in Section 17 (O) of this Contract setting forth the details of each phase, including the MBE/WBE/SBE requirements for that phase. Each Phase shall be independent and have its own Contract Time, Commencement Date, Installation Period, Guarantee Period, and its own schedule and dates for Substantial Completion and Final Acceptance. Notwithstanding, excess savings may be used by subsequent phases at the option of the Customer and cash flow may be calculated and shown across all phases for the entire Contract.

B. Substantial Completion. The ESCO will commence the Work within ten (10) days after the Task Order Date of Commencement, as defined in the Task Order Notice to Proceed, and will diligently perform the Work so as to achieve Substantial Completion—determined by building and by ECM—of the Task Order no later than the (“**Substantial Completion Date**”) defined in each authorized Task Order. Authorized Task Order will include required Start Date, Substantial Completion Date, as well as pertinent project milestones and deliverables.

1. Certificate of Substantial Completion. When the ESCO believes that the entire Task Order Work or a particular ECM has achieved Substantial Completion, the ESCO will submit a certificate of Substantial Completion and a Punch List to the Customer and the Client on a form agreed to by the Parties. If the Customer concurs that the described portion of the Work as performed has achieved Substantial Completion, the Customer will accept that Work by signing the certificate of Substantial Completion and the Punch List and returning both to the ESCO. If the Customer does not concur that the Work has achieved Substantial Completion and/or that the Punch List is not complete or correct, then the Customer shall notify the ESCO within thirty (30) days of any discrepancies. To the extent the ESCO does not dispute the discrepancies raised by the Customer, the ESCO shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Substantial Completion to the Customer, and (ii) promptly complete all items on the Punch List. If the ESCO disagrees with the discrepancies raised by the Customer, the ESCO shall notify the Customer of a dispute and such dispute shall be resolved in accordance with Section 3.B.2 herein. If the Customer does not deliver written notice to the ESCO within thirty (30) days of receiving the certificate of Substantial Completion and the Punch List, the Customer will be deemed to have agreed to, signed and returned the certificate of Substantial Completion and the Punch List.

2. Disputes Concerning Substantial Completion. Any disputes concerning the Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm (“**Engineer Neutral**”), which firm shall be reasonably acceptable to both the ESCO, the Customer, and the Client. The Engineer Neutral shall be authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Design & Engineering Documents or the execution and/or completion of the Work embodied in the Design & Engineering Documents as it relates to the determination of Substantial Completion. The Engineer Neutral shall not have the authority to render determinations regarding delay claims, payment disputes or other Contract disputes that do not involve or arise out of the content of the Design & Engineering Documents and/or the quality of the execution of the Work. All disputes beyond the authority of the Engineer Neutral shall be resolved pursuant to Section 11 herein. The determination of the Engineer Neutral with respect to Substantial Completion will be final and binding upon the Parties. The ESCO and the Customer shall share equally the costs or fees for such firm in connection with such dispute resolution process.

C. Final Acceptance. The ESCO will diligently perform the Work so as to achieve Final Acceptance of Task Order Work, determined on a by building and by ECM basis, no later than forty-five (45) days from the date the Substantial Completion Certificate was executed, subject only to adjustments as permitted by this Contract (“**Final Acceptance Date**”). Upon Final Acceptance of each Task Order, the Customer shall provide the ESCO a certificate in

writing that such Final Acceptance has occurred and identifying the Final Acceptance Date (the "**Final Acceptance Certificate**").

D. Construction Schedule. The preliminary Construction Schedule is included within Schedule A of each Task Order. The Construction Schedule will be updated by the ESCO and submitted to the Customer at least monthly and, if requested by Customer, in electronic format. The ESCO will submit a revised Construction Schedule when the ESCO's planned sequence is changed or when Project changes are made that affect the Construction Schedule. Any changes to the Construction Schedule are subject to review and approval by the Customer. When performing the Work, the ESCO will comply with the Construction Schedule.

E. Contract Expiration. This agreement will cease on December 31, 2019. No Task Orders will be issued after December 31, 2019. All Task Orders issued prior to December 31, 2019 are subject to all terms and conditions set forth herein.

SECTION 4. COMPENSATION TO THE ESCO.

A. Contract Sum. Unless an increase is authorized by the Customer and Client through the issuance of an executed field order, change order or amendment, the maximum sum that may be authorized for various phases of work under this Contract shall be the amount as indicated within the authorized Task Order. The Customer will pay the ESCO for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon this ESCO pursuant to this Contract, other than the Performance Tracking Services, the "**Contract Sum**" authorized by each fully executed Task Order, subject to additions and deductions by Change Order as provided in this Contract. Once the lump sum amount for a Task Order is reached, ESCO has no obligation to perform any additional work, and Customer has no obligation to pay for any additional work by ESCO without written approval from the ESCO, the MWRD Board, and the PBC Board.

B. Environmental Incentives. The Customer will own, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Incentives. Environmental Incentives will not be included within any calculation of savings or otherwise reduce the ESCO's responsibility for achieving the Guaranteed Annual Savings Amount or Guaranteed Project Savings Amount, as such terms are defined in Schedule B of each Task Order.

C. Compensation for Performance Tracking Services. Commencing on the Savings Guarantee Commencement Date and continuing until the expiration or earlier termination of this Contract, the ESCO will perform the Performance Tracking Services. During the Guarantee Period, the Customer will make annual payments to the ESCO for the Performance Tracking Services in the amounts set forth in Schedule G (each, a "**Performance Tracking Services Payment**") of each Task Order.

SECTION 5. CUSTOMER RESPONSIBILITIES.

A. Project Manager; Customer Representative. The ESCO acknowledges and agrees that the Client has retained the PBC as its construction and program manager for the Project and Contract Services and, in such capacity, the PBC has the authority to act on behalf of the Client in connection therewith. The PBC will appoint one individual who will be authorized

to act on behalf of the PBC either to accept, reject or otherwise facilitate the orderly execution of the Contract Services and with whom the ESCO may consult at all reasonable times, and whose instructions, requests, and decisions in writing will be binding upon the PBC and Client as to all matters pertaining to this Contract (the "**Customer Representative**"). The PBC may substitute a new Customer Representative through written notice to the ESCO.

B. Information to ESCO. The Customer agrees to provide, or cause the Client to provide, to the ESCO reasonable access to each Facility and information necessary for the ESCO to perform its responsibilities under this Contract. Such access and information will include, but is not limited to, the following items:

- All mechanical equipment rooms in each Facility;
- All temperature control and energy management systems which control part or all of any of each Facility;
- Personnel with responsibility for operating and/or managing each Facility;
- Monthly utility invoices and billing history for all of the meters listed in Schedule C of each Task Order;
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed in Schedule C of each Task Order; and
- Any data from meters or sub-meters relevant to the Performance Tracking Services.

Any information or documentation provided by the Customer or Client to the ESCO relating to the Project or Facilities is provided only for the convenience of the ESCO. The Customer makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.

C. Required Maintenance. Customer agrees to maintain, or cause the Client to maintain, the ECMs and the Facilities in accordance with the required maintenance checklist attached as Exhibit G, with allowance for normal wear and tear.

SECTION 6. INSTALLATION PERIOD SERVICES.

A. Permits and Approvals. Except for those approvals and fees which are specified as the responsibility of the Customer under the Contract Documents, the ESCO shall secure and pay for all necessary permits, approvals, assessments and charges, including, without limitation, all construction building permits, required for the proper execution and completion of the Work.

B. Design and Engineering Documents

1. The ESCO will prepare, for written approval by Customer, working drawings and specifications setting forth in detail the requirements of the construction and installation of the Project in accordance with the Contract Documents ("**Design & Engineering Documents**"). The Design & Engineering Documents must include all

drawings, specifications, schedules, diagrams and plans, and such content and detail as is necessary to properly complete the construction of the Project, and must provide information customarily necessary for the use of such documents by those in the building trades. Where required by law, the Design & Engineering Documents must bear the stamp or seal of architects or engineers licensed by the State of Illinois. The Design & Engineering Documents need not be submitted to the Customer as a complete set, but may be submitted in successive packages, each of which address separate construction trades or systems applicable to the Project. Design & Engineering Documents are required to be submitted through the document control system defined in Section 14 D. Within thirty (30) days after submission, the Customer will review each package of Design & Engineering Documents and either (i) accept such documents; or (ii) reject such documents, specifying in writing the basis for reject.

2. The ESCO covenants and agrees that (i) it will not commence the procurement or construction of any portion of the Project until the completed Design & Engineering Documents relevant to such part or portion have been accepted by the Customer in writing; and (ii) the Design & Engineering Documents will be accurate and free from any errors or omissions, and will be in compliance with and accurately reflect all applicable laws. The ESCO will, at no expense to Customer, promptly modify any Design & Engineering Documents which are not in accordance with laws or are inaccurate or contain errors or omissions. Unless the Customer requests the ESCO to order equipment or materials prior to its acceptance of the Design & Engineering Documents, the ESCO acknowledges and agrees that the Customer will have no liability for cancellation fees applicable to equipment orders until after the Customer accepts the Design & Engineering Documents.

3. The ESCO acknowledges and agrees that any review, approval, comment or evaluation by the Customer of any plans, drawings, specifications or other documents prepared by or on behalf of the ESCO is solely for the Customer's determining for its own satisfaction the suitability of the Project for the purposes intended therefor by the Customer, and may not be relied upon by the ESCO, its Subcontractors, or any other third party as a substantive review thereof. The Customer, in reviewing, approving, commenting on or evaluating any plans, drawings, specifications or other documents, will have no responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies or inadequacies therein or for any failure of such documents to comply with the requirements set forth in the Contract Documents; the responsibility for all of the foregoing matters being the sole obligation of the ESCO. In no event will any review, approval, comment or evaluation by the Customer relieve the ESCO of any liability or responsibility under this Contract, it being understood that the Customer is at all times ultimately relying upon the ESCO's skill, knowledge and professional training and experience in preparing any plans, drawings, specifications or other documents. The ESCO has provided to the Customer, at the time of offering its services, a written disclosure identifying any Subcontractors that are architect(s) and engineer(s) or professional firm(s) in each case licensed or registered to provide architectural and engineering services in Illinois (collectively the "**Licensed Professionals**") who have been engaged by the ESCO and will be responsible to the ESCO for the provision of the Contract Services constituting architectural services subject to the Illinois Architecture Practice Act of 1989, 235 ILCS 305 *et seq.*, or engineering services subject to the Professional Engineering Practice Act of 1989, 225 ILCS 325 *et seq.*, (each a "**Licensing Act**"). The Licensed Professionals have

participated in the contracting process for this Contract and will provide services under this Contract as required by the applicable Licensing Act and related regulations including Ill. Admin. Code tit. 68, §§ 1150.85 *et seq.* and 1380.296 *et seq.* (the "**Regulations**"). The ESCO will comply with the applicable Licensing Act and related Regulations.

C. Labor and Workmanship.

1. All labor for the Project shall be performed in the best workmanlike manner by workers skilled in their respective trades and shall be performed in compliance with the requirements of Exhibit D hereto. The ESCO will only employ and permit the use of such labor as shall not result in jurisdictional disputes or strikes or cause disharmony with the tenants, other contractors, agents, and employees at the Facilities or other sites affiliated with the Customer or Client. Local labor and subcontractors must be given preference where possible and practical. Any worker or other person involved in the performance of the Work who, in the opinion of Customer, is incompetent or careless in the execution of the Work or otherwise unsatisfactory shall be immediately removed upon request of the Customer. The ESCO will enforce strict discipline and good order among the ESCO's employees and other persons carrying out the Work.

2. The ESCO must use every reasonable effort to comply with the Customer's Project Participation Guidelines in the performance of the Work. The ESCO must complete and provide a letter of intent, in the form included in Exhibit E attached hereto, from each Subcontractor employed pursuant to the Project Participation Guidelines utilized in the performance of the Work.

D. Control Over Means, Methods, and Techniques. The ESCO is solely responsible for and will have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters.

E. Cutting and Patching. The ESCO will do all cutting, fitting, and patching necessary for the completion of the Work and will not alter or endanger any existing portion of the Facilities or any material or equipment installed therein without the consent of the Customer.

F. No Reliance Upon Customer or Client Representations. The ESCO has satisfied itself, by its own independent investigation and study, regarding all the conditions of the specific areas in the Facilities affected by the Work to be done and materials to be furnished; the meaning, intention and sufficiency of any plans and specifications for the Work; the recommendations of the Investment Grade Audit; and the conditions under which the Work is to be done; and has executed this Contract based solely on such investigation, study and determination made by it, and not in reliance upon any representation by Customer or Client or by anyone acting for or on behalf of Customer or Client.

G. Safety. The ESCO is responsible for all necessary safety precautions and programs in connection with the Work, including but not limited to providing whatever protection may be necessary to prevent injury to any persons, whether tenants, patrons, and/or employees or business invitees of Customer, Client, or the ESCO (including any Subcontractor) who may be present at the Facility or loss or damage to property of Customer, Client, or other persons,

including all materials and equipment to be incorporated into the Work and all existing improvements which are not to be removed as part of the Work. If the Work might affect the owners or occupants of property adjacent or adjoining the Facility, the ESCO will notify such owners and occupants of the Work and its possible effect on their property. If the Work might affect any utilities, utility service, or utility equipment, the ESCO will notify the utility companies or users of such utilities which might be affected by the Work, and if such utility equipment is not needed or interferes with the execution of the Work, the ESCO will remove or protect such utility equipment as required by such utility companies or users of such utility equipment.

H. Cleaning and Removal of Materials. The ESCO will at all times keep the Facilities free from any accumulation of rubbish, debris, and waste. Upon completion of the Work, as a condition of Final Completion and Acceptance of the Work, and prior to final payment of the Contract Sum by Customer, the ESCO must remove from the Site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades, and signs, and must restore the area surrounding the Site to the same general conditions that existed prior to the commencement of the Work. The ESCO will clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any portion of the Work or existing facilities or infrastructure due to Contractor's operations. The ESCO will thoroughly clean all Work, remedy any defects, and leave those portions of the Facilities in which the ESCO has been working in clean, orderly condition. Without limiting the generality of the foregoing, any ceiling and wall surface, floor, window or door frames, hardware, metalwork, and glass (both sides) which are part of the Work or which have become dirty or marred as a result of the ESCO's performance of the Work must be thoroughly cleaned. Contractor is solely responsible for and assumes all liability associated with off-Site disposal of any Hazardous Materials that Contractor brought to the site.

I. Recycling. The ESCO must give preference to the use of recycled products in the performance of any Work, and must cooperate with any recycling program established for the Facilities or available through the City of Chicago. The ESCO must perform the Work in accordance with the City of Chicago's Recycling Ordinance and Construction or Demolition Site Waste Recycling Ordinance and document its compliance with such requirements.

J. Access to the Work. The ESCO will provide the Customer with unrestricted access to the Work in preparation and progress wherever located in the Facilities, subject only to reasonable safety precautions.

K. Use of Facilities. The ESCO will confine its operations to the portions of the Facilities identified in the Contract Documents or otherwise approved by the Customer, and will not unreasonably encumber the portions of the Facilities used for the Work with materials, equipment, or similar items. The ESCO and all Subcontractors will use only such entrances to the Facilities as are designated by the Customer. During occupied hours, the ESCO will limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Facilities, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

L. Project Meetings. The ESCO will provide for weekly, or as mutually agreed upon, scheduled Project meetings during the Installation Period, and will give timely advance written notice and agenda of such meetings to the Customer. The ESCO will record minutes and distribute copies of minutes of meetings to the Customer within five (5) business days after

each meeting. The ESCO will schedule additional Project meetings if requested by the Customer.

M. Progress Reports. During the Installation Period, the ESCO will provide monthly reports to the Customer on the status of the Work that include, without limitation: (i) a detailed description of the progress of the work for each ECM and the Project as a whole, including a critical path chart illustrating the progress made; (ii) a statement of significant Project issues that remain unresolved and the ESCO's recommendations for resolving the same; (iii) an updated report on whether the Project remains on schedule and budget, and actions being taken to correct schedule delays and budget overruns; and (iv) a summary of any significant Project events that are scheduled to occur during the upcoming 30-day period.

N. Correction of the Work. The Customer has the right and authority to reject Work if defective or deficient, or which otherwise does not conform to the Contract Documents. During the Installation Period, the ESCO will promptly correct Work rejected by the Customer for failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. If the ESCO, after receipt of written notice from the Customer of its rejection of Work pursuant to this Section, either: (i) has not cured such failure within seven (7) days, or (ii) if the nature of the failure is such that it is not capable of cure within seven (7) days, has not within seven (7) days reached agreement with the Customer for a plan to cure such failure and has not commenced and diligently and continuously pursued the cure of such failure, then the Customer may order the ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated or the ESCO has provided the Customer with a plan for corrective action acceptable to the Customer in its reasonable judgment. The right of the Customer to stop the Work shall not, however, give rise to a duty on the part of the Customer to exercise this right for the benefit of the ESCO or any other person or entity.

O. Performance and Payment Bonds. The ESCO will, within thirty (30) days after each Task Order Date of Commencement and prior to performing any Work, obtain and furnish to Customer and maintain in effect throughout the Installation Period payment and performance bonds covering the faithful performance and completion of the Work required during the Installation Period and the payment of all obligations arising under this Contract during the Installation Period. The payment and performance bonds shall remain in full force and effect for a period of one year from and after Final Acceptance. Such bonds must (i) be issued by a surety company authorized to do business in Illinois and listed in the latest issue of U.S. Treasury Circular 570, (ii) be in form acceptable to the Customer and the Lender, in an amount equal to the Task Order Contract Sum, and (iv) name the Customer as Obligee. No notice of change order need be given to the surety company. The ESCO must supply evidence satisfactory to the Customer that the party issuing the bonds has the authority to bind the issuing surety company. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of this Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of this Contract. In addition, the payment and performance bond shall include a provision that will guarantee the faithful performance of the prevailing wage clause as provided herein.

If the ESCO fails to furnish and maintain such bonds, the Customer may purchase such bonds on behalf of the ESCO and the ESCO must pay the cost thereof to the Customer upon demand.

1. The ESCO must comply with the following State of Illinois Statutes: 70 ILCS 2605 and 11.13 & 30 ILCS 550/0.01 regarding Performance and Payment Bonds.

P. Startup/Commissioning. The ESCO will conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Schedule A of each Task Order, and demonstrate that all ECMs comply with the requirements of the Contract Documents. The tests must be performed by the commissioning entity designated in Schedule A of each Task Order, or, if no entity is designated, a commissioning entity selected from a pre-qualified list of commissioning entities provided by the Customer. All tests shall be scheduled at times convenient to the Customer at no additional cost. At least twenty (20) business days prior to the scheduled test, the ESCO will deliver to the Customer a draft commissioning plan for each ECM. The Customer may require changes to the commissioning plan, provided the ESCO is provided with a written description of the changes. The Customer will have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the ECMs. The ESCO, or its Subcontractor(s), must correct or adjust all deficiencies in operation of the ECMs identified during the course of the tests described in this Section. The ESCO will provide to the Customer a description of the ongoing training requirements for each Facility's operations and maintenance personnel necessary to maintain proper ECM performance after Final Acceptance.

Q. Additional Performance of Work Requirements. The ESCO will comply with the additional performance of work requirements described in Schedule F of each Task Order.

SECTION 7. OTHER SERVICES AND REQUIREMENTS OF THE ESCO.

A. Professional Standard. The ESCO will perform, or cause to be performed, all of the Contract Services with that degree of skill, care and diligence normally shown by (and generally accepted as being appropriate for) nationally recognized design, engineering, and construction professionals performing services and work of a scope, purpose and magnitude comparable with the Contract Services (the "**Professional Standard**"). Where the Contract Services require the exercise of professional skill or judgment, the ESCO will cause it to be performed by professionals competent to do so and licensed by the State of Illinois in the applicable discipline, if such licensure is required by law. The ESCO will furnish efficient administration, supervision, and superintendence of all Contract Services and will use every effort to complete the Contract Services in an expeditious and economical manner consistent with the interests of the Customer.

B. Contract Documents. The ESCO hereby covenants and agrees that it will duly and properly perform the Contract Services and implement the Project in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the ESCO will provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Contract Services. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Contract Services including, without limitation, all items and services which are consistent with, contemplated by,

or reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The Contract Documents are complementary, and what is required by one shall be binding as if required by all.

C. Subcontractors. The ESCO will furnish in writing to the Customer for its approval the names of the Subcontractors to whom the ESCO plans to award any portion of the Contract Services. Contracts between the ESCO and its Subcontractors must require each Subcontractor, to the extent of the Contract Services to be performed by the Subcontractor, to be bound to the ESCO by the terms of the Contract Documents, and to assume toward the Customer all the obligations and responsibilities which the ESCO, by the Contract Documents, assumes toward the Customer. The ESCO will be responsible to the Customer for acts and omissions of the Subcontractors, their agents and employees, and any other persons performing portions of the Contract Services, and for any damages, losses, costs, and expenses resulting from such acts or omissions, to the same extent as the ESCO is responsible to the Customer for its acts and omissions under this Contract.

D. ESCO's Key Personnel. Included within Schedule A of each Task Order is a list of the ESCO's key personnel who will be responsible for supervising the performance of the Contract Services. Among such individuals there shall be appointed a principal representative of the ESCO (the "**ESCO Representative**") who shall be the ESCO's authorized representative, and who shall receive and initiate all communications to and from the Customer and be authorized to render binding decisions related to the Contract Services. ESCO shall notify promptly the Customer upon terminating the employment of, reassigning or receiving notice of the resignation of, any ESCO Representative. If, after execution of this Contract or any subsequent Task Order, the Customer objects to any of the ESCO's key personnel (for any reason whatsoever), the ESCO will promptly remove such disapproved personnel. If any of the ESCO's key personnel are removed as provided above, any replacement personnel are subject to the prior written approval of the Customer, which approval will not be unreasonably withheld.

E. Taxes. Unless otherwise provided in the Contract Documents, the ESCO will pay all federal, state or local sales, consumer, use, and other similar taxes associated with the implementation of the Work which are legally enacted as of the date of execution of this Contract, whether or not effective or merely scheduled to go into effect. The Customer will be responsible for all federal, state or local taxes which are imposed as a result of the Customer's ownership of the Project or are related to the financing of the Project. The PBC will provide its sales tax exemption certification for purchases of equipment, tools, materials, and supplies relating to the Project.

F. Compliance with Law. The ESCO will comply with all applicable provisions of federal, state and local law when performing any services set forth or described in this Contract, now existing or hereinafter in effect, which may in any manner affect the performance of this Contract. Provisions required by law, rules, ordinances, regulations or executive orders to be inserted shall be deemed inserted whether or not they appear in this Contract, or upon application by either party, this Contract shall forthwith be physically amended to make such insertion; however, in no event shall the failure to insert such provision(s) prevent the enforcement of this Contract. The ESCO shall also comply with all conditions of any federal, state, or local grant received by the Customer or the ESCO with respect to this Contract or the Contract Services.

1. The ESCO will promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention. The ESCO shall promptly, and in no event later than the close of the next business day following receipt, give notice to the Customer by telephone, with confirmation in writing, of receipt by the ESCO of any information relating to violations of laws, ordinances, rules, regulations, and orders.

2. In performing the Contract Services, the ESCO must comply with applicable laws prohibiting discrimination against individuals and groups. The ESCO must 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.

3. The ESCO 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.

4. The ESCO will furnish such reports and information as may be requested by the Customer, 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.

5. The ESCO 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 Contract, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the Customer may withhold from the ESCO, out of payments due to the ESCO, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Contract and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Customer for and on account of the ESCO to the respective employees to whom they are due, as determined by the Customer in its sole discretion.

6. The ESCO agrees to cooperate fully and expeditiously with the PBC's Inspector General and the Client in all investigations or audits. The ESCO agrees to provide all documents, data, files and other information and access to all witnesses specified by the PBC's Inspector General and the Client. This obligation applies to all

officers, directors, agents, partners, and employees of the ESCO. The ESCO agrees to insert this provision in any subcontracts that it awards.

7. Pursuant to Municipal Code of Chicago Section 2-92-220, a standard working day consists of eight (8) hours for this Contract. The ESCO shall, and shall cause any Subcontractors providing services hereunder, to coordinate shifts with the Client. No overtime or premium pay will be permitted by the ESCO unless otherwise specified in the Contract Documents and authorized by the Customer.

8. The ESCO shall comply with the Client-required terms and conditions set forth in Exhibit D hereto.

9. Pursuant to Municipal Code of Chicago Section 1-24, every Employer shall pay no less than the Wages as outlined in the Ordinance to each Covered Employee for each hour of work performed for that Employer while physically present within the geographic boundaries of the City.

10. For other Municipalities outside of the City of Chicago in which work under this contract is to be performed, Employer shall pay no less than the Wages as outlined in those Municipality's Ordinances to each Covered Employee for each hour of work performed for that Employer while physically present within the geographic boundaries of those Municipalities.

11. The ESCO and any Subcontractors providing services hereunder must comply with the State of Illinois Statute (430 ILCS 66/) Firearm Concealed Carry Act.

12. The ESCO and any Subcontractors providing services hereunder must comply with the State of Illinois Statute (70 ILCS 2605/11.15) regarding United States Citizenship.

G. Remedy to Damage or Loss. The ESCO will promptly remedy damage, injury or loss at the Facilities to the extent caused by the ESCO, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

H. Discharge of Mechanics Liens. Subject to the payment of amounts due hereunder from Customer and Client to ESCO, if any mechanic's, materialman's, or other similar lien is at any time filed against any Facility or ECM or any part thereof on account of any Work performed on or furnished to or claimed to be performed on or furnished to the Work at the direction of the ESCO or any Subcontractor, the ESCO will, upon written request from Customer and Client and without cost or expense to the Customer or Client, promptly cause the sum to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise. If the ESCO, having been requested by the Customer or Client to discharge such lien, fails to commence appropriate action to discharge such lien within ten (10) days after such written request by the Customer or Client, the Customer or Client will have the right to discharge the same by payment, bond, order of a court of competent jurisdiction, or otherwise and without regard to whether the ESCO is disputing the validity or amount of the same, and the costs and expenses incurred by Customer or Client in so discharging such lien shall be payable by the ESCO to the Customer and Client upon demand. The ESCO will protect the Customer and Client against lien filings to the extent that payment is received for completed service or delivered equipment.

I. **Royalties and License Fees.** The ESCO will pay all royalties and license fees related to the Contract Services.

J. **Publicity.** Upon the reasonable request of the Customer or Client, the ESCO will cooperate with and assist the Customer and Client in connection with any public relations or publicity relating to the Project, including, without limitation, tours of Facilities arranged by the Customer or Client. Without the prior written consent of the Customer and Client, the ESCO will not disclose details or information relating to the Project or Contract Services to the press, the public, any news-disseminating agency or any other party, except to those parties performing portions of the Contract Services, and then only to the extent required for the performance of the particular portion of the Contract Services being performed.

K. **Retention and Inspection of Documents.**

The ESCO must maintain books, records, documents and other evidence pertaining to the performance and cost of the Contract Services ("**Records**") for a period of ten (10) years after the termination of this Contract ("**Retention Period**"). The ESCO shall use accounting procedures and practices in accordance with generally accepted accounting principles and practices, consistently applied to all of the Records. The Records will be open to audit, inspection, copying, abstracting and transcription and must be made available to the Customer at reasonable times upon prior notice during the term of this Contract and the Retention Period. The Records retention obligation set forth in this Subsection shall survive the termination or expiration of this Contract, whether by lapse of time or otherwise.

The Customer or the Client may, in their sole discretion, audit the Records of the ESCO or its Subcontractors, or both, at any time during the Term or Retention Period, in connection with the Contract Services. Each calendar year or partial calendar year may be deemed an "audited period." If, as a result of such an audit, it is determined that the ESCO or any of its Subcontractors has overcharged the Customer in the audited period, the Customer will notify the ESCO. The ESCO must then promptly reimburse the Customer for any amounts the Customer has paid the ESCO due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the Customer representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided or of underpayments by the ESCO, in the audited period, then the ESCO must reimburse the Customer for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the Customer or the Client conducts; if, however, the audit has revealed overcharges to the Customer representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period or of underpayments by the ESCO, then the ESCO must reimburse the Customer for the full cost of the audit and of each subsequent audit. Failure of ESCO to reimburse the Customer in accordance with the foregoing is an event of default under this Contract, and the ESCO will be liable for all of the Customer's and the Client's costs of collection, including any court costs and attorneys' fees.

L. **Cooperation.** The ESCO will cooperate with and assist the Customer, the Client, and their advisors, consultants, attorneys, employees, agents and representatives, at all times during the Contract Time so as to complete the Contract Services in an efficient, timely, and economical manner. Such cooperation and assistance will include, without limitation, any cooperation or assistance required in connection with the Customer's efforts to obtain financing for the Project.

M. Confidential Information.

1. Both Parties acknowledge that they may, in performing the Contract Services, have access to or be directly or indirectly exposed to Confidential Information. The Parties will hold confidential all Confidential Information and will not disclose or use such Confidential Information for any purpose other than the performance of the Contract Services without express prior written consent of the other Party. The Parties will use reasonable measures at least as strict as it uses to protect its own confidential information. Such measures must include, without limitation, requiring Subcontractors of the ESCO to execute a non-disclosure agreement before obtaining access to Confidential Information. The Parties may mark documents using a suitable legend identifying its proprietary or confidential nature; however, failure to mark such documents shall not exclude the documents from the protections and requirements stated herein.

2. The ESCO acknowledges that the Customer and Client are subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., and that no disclosure made in good faith by the Customer or the Client pursuant to such Act shall be deemed to violate any confidentiality commitments made by the Customer to the ESCO.

N. ECM Malfunction. The ESCO agrees to compensate, through repair or replacement at ESCO's option, the Customer or Client for damages to real or personal property and related costs and expenses incurred by the respective Customer or Client resulting from ECM malfunction to the extent caused by nonperformance or error by the ESCO or its Subcontractors.

O. Financing Contract Requirements. If one or more Financing Contracts are entered into for the Project, the ESCO agrees to provide the parties to the Financing Contract such written information, certificates, copies of invoices, receipts, lien waivers, affidavits, and other like documents as such parties may reasonably request. The ESCO hereby subordinates any liens or security interests to which it may be entitled by law or under the provisions of this Contract to any lien or security interest granted in favor of the party or parties to a Financing Contract.

P. Credit and Financial Information. In the event such information is not publicly available and if requested by the Customer, the ESCO will deliver or cause to be delivered to the Customer:

(a) as soon as available and in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year, unaudited consolidated balance sheets of the ESCO as of the end of such fiscal quarter and unaudited consolidated statements of income for the ESCO for the fiscal quarter then ended and for that portion of the fiscal year then ended, in each case setting forth comparative consolidated figures as of the end of and for the corresponding period in the preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP (subject to the absence of notes required by GAAP and subject to normal year-end adjustments); and

(b) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year, an audited consolidated balance sheet of the ESCO as of the end of such fiscal year and audited consolidated statements of income for the ESCO for the fiscal year then ended, including the notes thereto, in each case setting forth comparative figures as of the

end of and for the preceding fiscal year, all in reasonable detail and certified by the independent certified public accounting firm regularly retained by the ESCO or another independent certified public accounting firm of recognized standing.

Q. ESCO Responsibility. Subject to Section 12.J of this Agreement ("Excusable Events"), the Work is under the charge and care of the ESCO until Final Completion and Acceptance of the Work by the Commission, unless otherwise specified in the Contract Documents. Except for Excusable Events, the ESCO assumes all responsibility for injury or damage of the Work by action of elements, fire or any other causes whatsoever, including, injury or damage arising from the execution or non-execution of the Work. The ESCO must rebuild, repair, restore, and make good, at no additional cost to the Commission, all injuries or damages to any portion of its Work before Final Completion and Acceptance of the Work. When equipment or materials are furnished to the ESCO by the Commission for use or inclusion in the Work, the ESCO's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by ESCO.

SECTION 8. WARRANTIES AND ECM REPAIR AND REPLACEMENT.

A. Warranty. For the Warranty Period, the ESCO warrants to the Customer that materials and equipment furnished under this Contract will be of good quality and new, that the Work will be performed in accordance with the Professional Standard and free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Customer.

B. Exclusion from Warranty. ESCO's warranty excludes remedy for damage or defect to the extent caused by (i) modifications not approved or executed by ESCO or its Subcontractors, (ii) improper or insufficient maintenance or operation that is not in accordance with Exhibit G and not supervised or directed by the ESCO or its Subcontractors, (iii) normal wear and tear under normal usage, or (iv) equipment that has been the subject of negligence, accident or damage by circumstances beyond the ESCO's control. If required by the Customer, the ESCO shall furnish satisfactory evidence as to the kind and quality of materials and equipment to meet the requirements of this Section 8.

C. Warranty Period. The warranty period for the Work ("**Warranty Period**") is the period that is the twelve (12) months, running on an ECM by site basis from and after the date of Substantial Completion of such ECM or portion thereof.

D. Breach of Warranty. If, at any time prior to the expiration of the Warranty Period, the Customer discovers any failure or breach of the ESCO's warranties, the ESCO will, upon written notice from the Customer and at the ESCO's sole cost and expense, immediately correct such failure or breach (which corrective action may include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the Work and any other property damaged or affected by such failure, breach, or corrective action). The ESCO will remedy any such failure or breach so as to minimize revenue loss to the Customer and, to the extent possible, to avoid disruptions to the operations of the Customer and other occupants of the Facilities. In the event the ESCO fails to initiate and diligently pursue corrective action within five (5) days of the

ESCO's receipt of the Customer's notice, the Customer may undertake such corrective action at the ESCO's expense.

E. Manufacturers' Warranties. At Final Acceptance of the Work for a particular ECM, the ESCO will furnish the Customer two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work for that ECM (collectively referred to as "***Manufacturers' Warranties***"), completed in favor of the Customer. These Manufacturers' Warranties are in addition to and not in lieu of the ESCO's warranty set forth in Section 8.A, and the Customer is entitled to look to the ESCO for remedy in all cases where the ESCO's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Customer will acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the ESCO will cause six (6) copies of an acknowledged set to be made and furnish them to the Customer. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Customer than those terms which are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Customer, or be in a freely assignable form and be assigned to the Customer without limitations.

F. Repair and Replacement of ECMs. If the ESCO or the Customer find that an ECM requires repair or replacement, the other Party must be notified and the ESCO will repair or replace the ECM if required to do so pursuant to its obligation to correct the Work or its warranty obligations under Section 8.A. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties apply to the ECM requiring repair or replacement, the Customer will cause the repair or replacement of the ECM in accordance with the Manufacturers' Warranties. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties do not apply, the ESCO and Customer will agree to a schedule for the repair or replacement of the ECM, at the Customer's expense, that establishes reasonable timeframes for the engineering, procurement, and construction and installation associated with such work. The Parties will use good faith efforts to agree to any necessary adjustments to the energy performance calculations that account for the energy savings attributable to the period of time needed to repair or replace the ECM. However, any such adjustments to the energy performance calculations are subject to the terms and provisions of Schedule C of each Task Order, which require the ESCO to notify the Customer within thirty (30) days of the ESCO becoming aware of a possible Cause for Adjustment, and to specify all Causes for Adjustment in the annual guaranteed savings reconciliation process.

SECTION 9. INSURANCE, DAMAGE AND DESTRUCTION, AND INDEMNIFICATION.

A. Insurance to be Maintained by ESCO; Limitation of Liability.

1. The ESCO will maintain, at its sole cost and expense, the insurance set forth in Exhibit B hereto in form and substance satisfactory to the Customer from insurance companies authorized to do business in the State of Illinois which are rated at least A-VII by A.M. Best Company and acceptable to the Customer. The ESCO will furnish to Customer and the Lender certificates evidencing such insurance. During the Guarantee Period, the insurance coverage set forth on Exhibit B may be reduced to a level deemed necessary by the Customer, in its reasonable discretion, to protect the Customer and Client from liability for acts of the ESCO during the performance of the Guarantee Period Services.

2. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

B. Damage and Destruction. The Customer is not liable for damage or destruction to the Work and/or to (a) any tools owned by mechanics, (b) any tools, equipment, scaffolding, staging, towers, and forms rented by ESCO, the capital value of which is not included in the Contract Sum, and (c) any structures erected for housing or convenience of workmen caused by, but not limited to, the following: fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, or malicious mischief.

C. Risk of Loss. Regardless of the passage of title, risk of loss and damage to the Work shall remain with the ESCO until the date of Final Acceptance of the entire Project.

D. Indemnification.

1. Professional Indemnity. For claims alleging professional negligence, the ESCO must defend, indemnify and hold the Client and the Commission, and their respective commissioners, board members, officers, officials and employees (hereafter the "**Indemnified Parties**") free and harmless from and against all liabilities, claims, demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may be imposed by law and arise out of the ESCO's negligent acts, errors and omissions and misconduct in the ESCO's performance under this Contract or the performance of any Subcontractor retained by the ESCO in connection with this Contract.

2. General Indemnity. For all other claims, the ESCO must protect, defend, indemnify, hold the Indemnified Parties free and harmless from and against all liabilities, claims, demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may be imposed by law and arise out of the performance of ESCO's Work under this Contract and such claim is attributable to any injury to persons or property that is, or is claimed to be, the result of the ESCO's or a Subcontractor's negligent acts or omissions under this Contract.

3. Scope of Indemnification. The indemnification obligations provided in this Section 9 will be effective to the maximum extent permitted by law. To the extent permitted by law, the ESCO waives any limits to its liability hereunder that it would otherwise have by virtue of the Workers' Compensation Act or any other related law or judicial decision (including, without limitation, *Kotecki vs. Cyclops Welding Corporation*, 156 Ill. 2d. 155 (1991)). This indemnity extends to all legal costs, including, without limitation: reasonable 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. The ESCO 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 ESCO even though the claimant may allege that the Indemnified Parties were in charge of the Contract 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 at its/their expense, without relieving the ESCO of its obligations hereunder. Notwithstanding the forgoing, the ESCO shall have no obligation to indemnify an Indemnified Party for the Indemnified Party's own negligence or willful misconduct.

SECTION 10. ENVIRONMENTAL WORK AND HAZARDOUS MATERIALS.

A. Abatement and Removal of ACM. The Work to be performed by the ESCO includes the proper abatement, removal, and disposal of asbestos containing material and associated debris ("ACM") only to the extent included in the Work described in Schedule A of each Task Order. All Work involving ACM must be performed in accordance with the ACM-related performance of work requirements described in Schedule H of each Task Order and the other terms and provisions of this Contract. In the event that the ESCO discovers ACM (i) that was not identified in the Contract Documents prior to the commencement of the Work or (ii) that could not have been identified by the ESCO through the exercise of reasonable diligence during the performance of the Investment Grade Audit, the ESCO and Customer shall negotiate an equitable adjustment to the Contract Sum and Scheduled Completion Dates pursuant to Section 12.1.

B. Performance of Other Environmental Work. If the Contract Documents require the ESCO to manage or perform any Environmental Work, or if in the course of the Work, Hazardous Materials or Mold are encountered requiring action, the ESCO must cooperate and coordinate its Work in all respects with that of Environmental Consultants, perform its Work according to safe and approved protocols and procedures, utilize only fully qualified and licensed abaters and remediators, and sequence and perform the Work to minimize environmental contamination of the Facilities. The ESCO will consult with the Customer, including its Environmental Consultants, to determine whether previous abatement, remediation, stabilization, or containment work has been performed at the Facility. If so, the ESCO will perform its Work so as not to undo or disturb the prior work.

C. Encountering Hazardous Materials or Mold. If the ESCO encounters material in a Facility reasonably believed to be a Hazardous Material (including ACM) or Mold that has not been identified in the Contract Documents for removal by ESCO or that constitutes a Concealed Condition, the ESCO must immediately stop Work in the area affected and report the condition to the Customer Representative in writing and by telephone or in person. The Customer or its Environmental Consultants will verify the presence or absence of the Hazardous Material or Mold reported by the ESCO and, if the Hazardous Material or Mold is found to be present, develop a plan for identifying and handling the Hazardous Material or Mold. If no plan is in place, the ESCO will await and follow directions of the Customer. The Work in the affected area may be resumed in the absence of the Hazardous Material or Mold, or when it has been rendered harmless. Should ESCO stop work because of the discovery of Hazardous Materials or Mold, the time for performance of ESCO'S Work will be extended to cover the period required for abatement, cleanup, or removal of such materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped work as a result of Hazardous Materials or Mold. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Time, and if appropriate, the Contract Sum, for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph. Customer will be responsible for taking all necessary steps to correct, abate, clean up, or control Hazardous Materials or Mold not otherwise delegated to ESCO in the Contract Documents.

D. Hazardous Materials Introduced to the Facilities by the ESCO.

Notwithstanding anything to the contrary set forth in this Section 10, if any Hazardous Materials are introduced to any Facility by the ESCO, its Subcontractors, and any party for whom they may be liable or if any Mold occurs within the Facilities as the result of the incorrect implementation of the Project or the malfunctioning of the ECMs during implementation or the Warranty Period for that ECM, then any response, removal, cleanup, or other remedial action required by applicable law shall be performed by the ESCO at its sole cost and expense. Except as to the ESCO's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of the Customer.

SECTION 11. CLAIMS AND DISPUTES.

A. **ESCO's Request.** In the event of any disagreement between the ESCO and the Commission Representative which the ESCO and the Commission Representative have attempted, but been unable, to resolve, including, without limitation, changes, time extensions, claims, allowable costs or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract, a request for resolution of the Dispute must be submitted to the Executive Director by the ESCO for final determination. The ESCO may not file a Dispute until there has been a denial of the Claim, which was the basis for the Dispute, by the Commission Representative. The default or termination of the ESCO are not matters that may be disputed under this provision of the Contract. The ESCO's failure to submit the Dispute within thirty (30) days of receipt of the Commission Representative's response to the ESCO's Claim is a waiver of the Dispute. The Executive Director may consider issues of Contract interpretation in connection with decisions to be made in resolving Disputes.

B. **Request Requirements.** Requests for resolution of Disputes must be made by the ESCO in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the ESCO and Commission Representative; 3) the facts underlying the Dispute; 4) reference to the applicable provision of the Contract Documents by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the Dispute; 6) all documentation which describes and relates to the Dispute and 7) if applicable, a statement explaining why the ESCO believes that prior to rendering a final decision, the Executive Director should meet with the ESCO, Commission Representative or any other parties believed to be necessary to the resolution of the Dispute. Copies of the request for resolution of the Dispute must promptly be provided to the Executive Director and Commission Representative on the same day. In addition, the ESCO's Dispute and any subsequent correspondence that relates to the Dispute which the ESCO provides to the Executive Director must be copied to the Commission Representative. The Commission Representative shall have thirty (30) days to respond in writing to the ESCO's submission by supplementing the ESCO's submission or to provide its own submission to the Executive Director and ESCO. However, the Commission Representative may request, and the Executive Director may allow an additional period of time to respond. Failure by the Commission Representative to respond shall not be deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the Dispute. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Executive Director.

C. **Executive Director's Decision.** The Executive Director's final decision shall be rendered in writing no more than thirty-five (35) days after receipt of the response of the

Commission Representative was filed or was due, unless the Executive Director notifies the ESCO and Commission Representative before the end of the thirty-five (35) day period that an additional period, not to exceed thirty (30) days, is needed for the Executive Director to respond. The Executive Director's decision shall be conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.

D. **Implementation of Decision.** In the event that the Executive Director's final decision requires a change to the Contract, the Executive Director's final decision shall be implemented through a Change Order which shall be made a part of the Contract.

E. **ESCO's Remedy.** If either the ESCO or Commission does not agree with the decision of the Executive Director, the sole and exclusive remedy is judicial review by a common law writ of certiorari. Unless such review is sought within thirty-five (35) days of receipt of the Executive Director's decision, all right to seek judicial review is waived.

F. **ESCO's Performance of Work.** The ESCO may not withhold performance of and must prosecute any Work required by the Contract during the dispute resolution period, including judicial resolution. The ESCO must prosecute all of its Work, including any disputed Work, with the same diligence and effort as if no dispute existed. The Executive Director's written determination must be complied with pending final resolution, including judicial resolution of the Dispute. Neither the Executive Director's determination, nor the actions of the ESCO or the Commission Representative in connection therewith, nor the continued performance by either party, shall constitute an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

G. **Administrative Appeal of Dispute.** The ESCO must follow the procedures set out in this Section 11, "Claims and Disputes", and receive the Executive Director's final decision as a condition precedent to filing a judicial review of the decision by common law writ of certiorari.

SECTION 12. CHANGES IN THE WORK.

A. Commission's Right to Change Work

1. The Commission reserves the right to order, in writing, changes in the Work or the Schedule without prior notice to the ESCO's surety. The ESCO is obligated to perform the changed Work included in the written notice from the Commission in a timely manner. The ESCO must begin the changed Work upon receipt of a Field Order signed by the Commission Representative unilaterally directing changes in the Work or Schedule.

B. Commission Directed Changes in the Work

1. The Commission may make changes in the Work by making alterations therein, or by making additions thereto, or by making deductions or omissions therefrom, without invalidating the Contract and without releasing or relieving the ESCO from any guarantee given pursuant to the Contract, without affecting the validity of the guarantee or Performance and Payment Bond and without relieving or releasing the surety or sureties of such bond. All such Work will be executed under the conditions of the original

Contract. The ESCO will submit to the Commission Representative "as-built" or revised drawings clearly showing the revised Work, all as required by Section 14.C.

2. Except in an emergency endangering life or property, no change in the Work will be made by the ESCO without receipt of a Field Order signed by the Commission Representative.

3. The ESCO will not perform changes to the Work directed by the Commission Representative or the Client unless authorized to do so by the Commission based upon a Field Order signed by the Commission Representative.

C. Changes to the Work Initiated by ESCO

1. In the event that ESCO identifies an error or omission in the Contract Documents or encounters a differing site condition, the ESCO shall submit a Request For Information (RFI) to the Commission Representative. If, upon receipt of a response from the Commission Representative, to the RFI, the ESCO believes that there has been a change to the Work, the ESCO will submit a Contractor Proposed Change Order (CPCO) to the Commission Representative. The CPCO will state: the issue presented; any change to the Work that, in the opinion of the ESCO the issue requires; ESCO's proposed resolution of the issue; and the cost of the Work.

2. The Commission Representative will respond promptly to the CPCO. The response will take one of two forms: i) the Commission Representative concurs with the ESCO, and issues a Field Order that incorporates the terms stated in the CPCO or a Field Order with other terms; ii) the Commission Representative denies the CPCO, and issues a response notifying the ESCO that there is no change to the Work, and directing the ESCO to perform the Work pursuant to the answer to the RFI.

3. In the event that a CPCO is denied, the ESCO may file a claim pursuant to Section 11, "Claims & Disputes."

4. The ESCO, within 14 Days of receipt of a Field Order, must submit to the Commission Representative a CPCO for the revisions to the Work directed by the Field Order. The ESCO's failure to submit such request within the specified time will result in the issuance of a Change Order by the Commission for the adjustment to the Contract Price and/or time for the performance of the Work, if any, that the Commission deems appropriate for the Field Order. This Section 12.C.4 does not pertain to Field Orders issued pursuant to Section 12.C.1 above.

D. Change Orders Finalize the Terms of Field Orders

1. The final terms and provisions of a Field Order, including any adjustment in the Contract Sum and/or the time for the performance of the Work, will be memorialized in a written Change Order signed first by the ESCO then by the Executive Director.

2. Costs shall not exceed the lump sum amount indicated in each Task Order, unless an increase above the lump sum cost indicated in each Task Order is authorized in writing by ESCO, the PBC Board, and the MWRD Board.

E. ESCO's Release

1. Any and all Change Orders are a full release of the Commission from any liability for any additional compensation or extension of time arising or resulting from the circumstances that gave rise to, and the Work performed pursuant to, a Change Order. By acceptance of a Change Order, the ESCO accepts the compensation and/or time extension provided in full accord and satisfaction for that Change Order, and expressly waives, releases, and relinquishes any and all additional claims and demands relating to, or arising out of, the matters covered by that Change Order. The release that the ESCO must sign will state: "By executing this Change Order, ESCO certifies that it has reviewed and accepts the compensation and/or time extension provided in full accord and satisfaction for this Change Order and that it expressly waives and releases any and all additional claims and demands relating to, or arising out of, the matters covered by this Change Order as more fully described in the exhibit attached hereto including but not limited to: direct, indirect, overhead, home or field office costs; profits; damages; disruptions and impact."

F. Performance of Changed Work

1. The ESCO will promptly proceed with any changes in the Work or Target Schedule as directed by a Field Order in accordance with Section 12.A "Commission's Right to Change Work." The ESCO's refusal or failure to proceed promptly as directed with the changed Work or changes in the Target Schedule constitutes an event of default under the Contract. No change to the Work by the ESCO as directed by the Commission will invalidate the Contract or release the ESCO's surety.

G. Change Claims and Disputes

1. If the ESCO and Commission Representative are unable to agree on the price and/or time extension in connection with a Field Order, the procedures set forth in Section 11, "Claims and Disputes" will govern.

H. Extension of Scheduled Completion Dates. The ESCO hereby acknowledges that the Work of this Contract will be performed in occupied buildings and that such occupancy has been factored into the establishment of the Contract Sum and Contract Time. Accordingly, no proposed Change Order from the ESCO arising out of the normal operations and occupancy of a Facility shall be considered by the Customer. If the ESCO claims that it is entitled to an extension of the Scheduled Completion Date by reason of (i) the issuance of a Change Order changing the Work, or (ii) the occurrence of an Excusable Event, the ESCO will give Customer notice to such effect, within ten (10) business days after the commencement of the event, setting forth the extension in the Scheduled Completion Dates requested by the ESCO and specifying the reasons why the ESCO is requesting such extension. If the durational impact of the event cannot be ascertained by the ESCO at this time, a preliminary notice of the event may be made without a request for an exact extension in the Scheduled Completion Dates to comply with this Section 12.H. The Customer will inform the ESCO of the extension, if any, of the Scheduled Completion Dates which the Customer is willing to make, and, if the Customer is willing to extend the Scheduled Completion Dates, a Change Order shall be issued extending the Scheduled Completion Dates to the date acceptable to the Customer. If the ESCO is delayed at any time in progress of the Work by changes ordered in the Work by an Excusable Event, then the Contract Time will be extended by Change Order provided that: (i) the ESCO

has notified the Customer in writing of such delay within ten (10) business days following the date when the ESCO becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (ii) the ESCO has taken all reasonable steps to avoid any such delay (including its continuance); and (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Work. Otherwise, the ESCO will not be entitled to an extension of the Contract Time for any delays in the progress of the Work.

I. Equitable Adjustment of Contract Sum. Except as the result of a Change Order as permitted by Sections 12.A and B, an increase in the Contract Sum will only be granted under the following circumstances:

1. The ESCO's cost of performing the Work demonstrably increased because of the occurrence of an Excusable Event described in Section 12.J, paragraphs (1) through (3);

2. The ESCO notified the Customer of the Excusable Event via written notice (which written notice may be via email) within three (3) business days following the date when ESCO became aware, or should have become aware through the exercise of reasonable diligence, of the Excusable Event, which written notice described the ESCO's efforts (or planned efforts) undertaken to overcome or remove the Excusable Event and to minimize the potential adverse effect on the cost for performance of the Work resulting from such Excusable Event.

3. The ESCO took all reasonable steps to avoid the Excusable Event;

4. The ESCO made a written request for an increase in the Contract Sum to the Customer within three (3) business days after the cessation of such Excusable Event specifying the additional cost the ESCO believed it incurred as a result of such event; and

5. The ESCO demonstrates, to the reasonable satisfaction of the Customer, that the Excusable Event did in fact cause an increase in the ESCO's cost of performing the Work.

Compliance with this Section is a condition precedent to receipt of an increase in the Contract Sum as the result of an Excusable Event. In the event of a failure to comply with this Section, the ESCO shall not be entitled to an increase in the Contract Sum and shall be deemed to have waived any future claim relating to such Excusable Event. Upon satisfaction by the ESCO of the terms and conditions in the preceding subsections, the Customer and the ESCO will use good faith efforts to agree on the extent to which the ESCO's costs for performing the Work have been increased as a result of any such Excusable Event. Once the Parties have mutually agreed as to the ESCO's increased cost, they shall enter into a Change Order reflecting their agreement as to the adjustment in the Contract Sum.

J. Excusable Events. The occurrence of any of the following events shall constitute an Excusable Event:

1. Delays resulting from the acts or omissions of the Customer, to the extent such delays arise from circumstances beyond the reasonable control and without the

fault or negligence of the ESCO, its Subcontractors, or other person for whom they may be liable;

2. The discovery of any Hazardous Materials or Mold in a Facility that is a Concealed Condition or not otherwise specifically identified in the Contract Documents for removal by ESCO (unless the Hazardous Materials are introduced to the Facility by the ESCO, its Subcontractors, or any party for whom they may be liable);

3. The occurrence of a change in law impacting the schedule or cost for the Work, provided that a change in any income tax law or any law by which a tax is levied or assessed on the basis of the ESCO's income, profits, revenues or gross receipts shall not be an Excusable Event; or

4. Any of the following acts, events, conditions or occurrences to the extent that the same are beyond the ESCO's reasonable control, which could not have been either foreseen or avoided by the exercise of due diligence, and which has an adverse effect on the ESCO's ability to perform the Work: drought, flood, earthquake, storm, mudslide, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, material changes in law, or strikes or labor disputes that affect the Work not reasonably anticipatable, unavoidable casualties, acts of public enemies, orders or restraints of any kind imposed by the government of the United States, any state or any of their departments, agencies or officials, or any other action of a civil government, military or judicial authority.

K. End Device Repair Allowance: If the Work in any phase contains an End Device Repair Allowance for ESCO to repair certain end devices as described in Schedule A of each Task Order. This allowance shall be controlled by ESCO during construction subject to the following requirements:

1. Repairs under \$10,000: Repairs under \$10,000 shall be performed at ESCO's discretion and reported to Customer on its schedule of values submitted with monthly applications for payment. The amount charged against the End Device Repair Allowance will be equal to subcontracted cost (including suppliers). Documentation showing subcontracted or purchase price shall be provided to Customer upon request.

2. Repair over \$10,000: Prior to making any end device repair over \$10,000, ESCO shall provide Customer and Client a written description of the repair to be performed and its cost. Customer and Client shall have 10 days to review and advise ESCO that they will make the repair with internal labor within 30 days. ESCO may proceed with the repair at the expiration of 10 days or after notice that the Client does not intend to self-perform, whichever comes first.

3. ESCO and Customer may authorize use of remaining funds in the End Device Repair Allowance for additional scope of work through issuance of a change order. Any balance of the End Device Repair Allowance at Final Acceptance shall remit to the Customer.

SECTION 13. PAYMENTS AND COMPLETION.

A. Payments.

1. The total of all payments for the Work performed during the Installation Period will constitute the Contract Sum. Construction progress payments will be made to the ESCO monthly based on the percentage completion of items delineated on the Schedule of Values included in Schedule A of each Task Order during the prior month.

2. During the Guarantee Period, each Performance Tracking Services Payment due from the Customer, as set forth on Schedule G each Task Order, will be paid to the ESCO on the dates and in the amounts set forth in Schedule G of each Task Order.

B. Withholding of Payments. Payments may be withheld to the extent of, and on account of (1) defective Work not remedied; (2) claims filed by third parties; (3) failure of ESCO to make payments promptly to the Subcontractors for labor, materials or equipment; or (4) failure by the ESCO to perform its obligations under the Contract Documents. The Customer shall promptly notify the ESCO of any reason for withholding payment and Customer shall promptly make payment to the ESCO upon the resolution of such occurrence.

C. Retainage. During the Installation Period, retainage of ten percent (10%) of the total amount earned will be withheld from partial payments to the ESCO until the ESCO has achieved 50% completion of the Work, as determined by the Customer. Thereafter, retainage of five percent (5%) of the total amount earned will be withheld from partial payments to the ESCO. The retainage will be released upon the occurrence Final Acceptance of the entire Project.

D. Payment Requests. Each payment request submitted by the ESCO during the Installation Period will be accompanied by the following, all in form and substance satisfactory to the Customer:

1. A duly executed and acknowledged ESCO's sworn statement showing all Subcontractors, the amount of each subcontract, the amount requested for any Subcontractor in the invoice and the amount to be paid to the ESCO, together with similar sworn statements from all Subcontractors;

2. Duly executed conditional waivers of mechanics', materialmen's and construction liens from the ESCO and all Subcontractors. The final invoice for the Contract Sum must be accompanied by final and full waivers of lien from all parties entitled to receive payment in connection with the Work; and

3. Such other documents and information as may be necessary or as may be reasonably requested by the Customer to verify satisfactory completion of the Work covered by such invoice and compliance with this Contract.

4. The ESCO will utilize the Commission's on-line collaboration and document management system (the "***OCDM System***") for the submission of the ESCO's monthly payment requests, including supporting Subcontractor documentation. The ESCO shall be responsible for implementation and use of the System for purposes of submitting its payment applications, including, without limitation, providing appropriate computer, network and information management systems and equipment for its personnel to access the System, training of the ESCO's personnel on the System and the applicable business process.

5. Ownership of and title to ECMs (or portions thereof) referenced in a payment request submitted by the ESCO as herein provided shall vest in the Customer immediately upon payment for such ECM, subject to any lender's security interest.

E. Payment Due Date. Customer will use commercially reasonable efforts to ensure that payment to the ESCO will be made net forty-five (45) days of submission of a payment request meeting the requirements of this Section given the request is reviewed and approved based on approved work performed. If payment is not made within an additional ten (10) days after the payment due date, and the Customer is not entitled to withhold payment pursuant to Section 13.B, the ESCO may suspend all Work until payment is made.

F. Offsets. All back charges to the ESCO, refunds from the ESCO, and other offsets against any amounts due to the ESCO that are permitted or required under the Contract Documents may be taken at any time from amounts due to the ESCO under the Contract Documents once the Customer has determined the amount of the back charge, refund, or offset to be made.

G. Certified Payrolls. Three copies of certified payrolls are to be submitted by the ESCO and all Subcontractors providing the Work to the PBC every week. The PBC may elect to utilize a Web-based method for electronic submittal of certified payrolls. In the event that the PBC elects to utilize electronic submittal, ESCO shall follow the directions provided by the PBC and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. The ESCO shall ensure that it is fully trained in the use of the electronic submittal system. All payrolls must be identified with ESCO or Subcontractor's name and the name of this Contract, and must be sequentially numbered. The payroll will be submitted by the ESCO and Subcontractor until all Work by that ESCO or Subcontractor is completed. If there are periods of no Work by the ESCO or a Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled "FINAL." Certified payrolls are required to assure Equal Employment Opportunity ("**EEO**") compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Commission. An employee's address should appear every time his/her name appears on the payroll. The ESCO must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a payroll summary report in the form required by the Commission. The EEO report form required by the PBC and the U.S. Department of Labor must be submitted by the ESCO and each Subcontractor, reflecting fully the periods of the Work covered by the partial payment request.

Every Subcontractor and supplier shall be required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the PBC. Each Subcontractor will be given a log on identification and password to access the PBC's web based reporting system for electronic submittal. Use of the system shall include additional data entry of weekly payroll information including: employee identification, labor classification, total hours worked and hours worked on the Project, wage and benefit rates paid, etc. in the manner specified by the PBC. This requirement will be "flowed down" to every lower-tier subcontractor and material supplier required to provide labor compliance documentation.

SECTION 14. OWNERSHIP OF DESIGN MATERIALS.

A. Copies of Design Materials. The copies and other tangible embodiments of the drawings, specifications, designs, plans, "architectural work" (as such term is defined in the

Architectural Works Copyright Protection Act of 1990) and other documents, prepared by or on behalf of the Customer, the ESCO, and/or Subcontractors in connection with the Project or the Contract Services (collectively, the "**Design Materials**") are and shall remain the exclusive property of the Customer. The ESCO shall use its best efforts to ensure all copies of the Design Materials are delivered or returned to the Customer or suitably accounted for upon the Customer's request or upon final payment, whichever is earlier. The ESCO may retain one copy of the Design Materials for its records, but shall not use such copies for any purpose other than with respect to the Contract Services without the Customer's prior written consent. The Intellectual Property Rights, if any, relating to the Design Materials or the contents of or concepts embodied in the Design Materials shall remain with and belong to the ESCO or its Subcontractors, as the case may be.

B. License for the Use of Design Materials. As to those Design Materials deemed subject to any form of Intellectual Property Rights, the ESCO hereby grants and will cause to be granted and delivered to the Customer from Subcontractors a paid-up, non-exclusive, world-wide, irrevocable, transferable license, for the term of the Intellectual Property Rights, for the Customer to use, reproduce and have reproduced, and for the Customer to allow others to use, reproduce and have reproduced, such Design Materials and any derivative thereof, subject to the restrictions set forth below:

1. All Intellectual Property Rights in or relating to any of the Design Materials shall remain the property of the ESCO or the appropriate Subcontractor, whether or not the Project is completed; and

2. The Customer shall not, without the prior written consent of the ESCO, use such Design Materials, in whole or in part, for the construction of any other project. The Customer may, however, at no cost to the Customer, use such Design Materials (i) for completion of the Project and the Contract Services by others upon termination of this Contract or termination of the ESCO's right to perform all or any portion of the Contract Services, and (ii) for the construction, operation, maintenance and repair of (and for additions, improvements, changes or alterations to) the Project after its completion.

C. Delivery of Design Materials and As-built Drawings. Upon the earlier of the date of Final Acceptance of the Work for a particular ECM or the date of termination of this Contract, the ESCO shall deliver to the Customer any Design Materials which have not been previously submitted to the Customer for that ECM. Upon the date of Final Acceptance of the entire Project, the ESCO must provide two (2) hard copies of "as-built" drawings of all modified conditions associated with the Project, conforming to typical engineering standards. The as-built drawings shall also be submitted in an electronic format compatible with the AutoCAD or other similar system in use by the Customer.

D. Document Control System. The PBC has an on-line collaboration and document management system (the "**OCDM System**"). The ESCO shall use the OCDM System to: track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission. The OCDM System shall be the mode of conveyance and repository for all Project-related documents. The ESCO shall post all Project-related documents to the OCDM System as directed by the Commission. By executing this Contract, the ESCO agrees to comply with all terms and conditions required by the PBC for the use of the OCDM System.

(1) Within 15 calendar days of the issuance of the Notice to Proceed, the ESCO shall designate an employee that will serve as its "OCDM System Coordinator." The ESCO's OCDM System Coordinator will be the point of contact for the PBC for implementation and support for the ESCO's use of the OCDM System.

(2) Employees of the ESCO, its Subcontractors and suppliers who will use the OCDM System must complete the training provided by the Commission. Each such employee must furnish a valid e-mail address to the PBC prior to the training.

(3) The OCDM System requires a broadband connection with the Internet (e.g., at a minimum, T1, cable modem, or DSL) for effective use. The ESCO must furnish its own hardware and software, including, but not limited to, personal computers, peripheral software, virus protection software and high-speed document scanners. All written communication and document transmittal from the ESCO to the PBC will occur via the OCDM System. In the event that hand signatures and/or stamps are required for a document, unless otherwise directed by the Commission, the transmittal of such document shall be made simultaneously via the OCDM System and hard copy; hard copy shall be transmitted as required by the Contract Documents. Signed and/or stamped documents must then be scanned and uploaded to the OCDM System.

(4) The ESCO shall be solely responsible for its use of the OCDM System, as well as use of the OCMD System by its Subcontractors and suppliers.

SECTION 15. DEFAULT AND TERMINATION.

A. Events of Default. The ESCO will be deemed to be in default under this Contract and the Contract Documents if ESCO:

1. fails to make any payment due under the Performance Guarantee;
2. becomes insolvent or bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency;
3. fails to perform the Contract Services in accordance with the Contract Documents, if not cured within any applicable cure period;
4. fails to perform the Work on the Project with sufficient workers, equipment or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract Documents;
5. discontinues prosecution of Work on the Project;
6. fails to make prompt payment to Subcontractors or for material or labor on the Project; or
7. is otherwise guilty of a breach of any provision of this Contract or the Contract Documents.

B. Remedies. In the event of a default by the ESCO, the Customer may, in addition to and without prejudice to any other right or remedy of the Customer under this Contract, terminate this Contract and the Contract Documents for the Project or for any portion of the Project. The Customer will then have the following rights (any or all of which may be exercised

by the Customer in its sole discretion, and in addition to and without prejudice to any other right or remedy): (a) to take (in the manner and to the extent desired by the Customer) an assignment of the ESCO's subcontracts and material orders for all or any portion of the Project; and (b) finish the Work on all or any portion of the Project by whatever method the Customer considers expedient. The ESCO will not be entitled to receive any further payment for the portion of the Work so terminated. If the expense of finishing the Work on the Project, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Contract Sum, the ESCO (and the surety or sureties on the bonds required pursuant to Section 6.O) are liable for and will pay the amount of the excess to the Customer.

C. Termination For Convenience. The Customer reserves the right, for its convenience, to terminate the Work of the ESCO on all or any portion the Project or to terminate this Contract by ten (10) days written notice stating the effective date of the termination. In that case, the ESCO and its Subcontractors must (except for services necessary for the orderly termination of the Work):

1. stop all Work so terminated;
2. place no further order or subcontracts for materials, services, equipment or supplies on the terminated Work;
3. assign to the Customer (in the manner and to the extent directed) all of the rights of the subcontracts relating to the terminated Work;
4. take any action necessary to protect property of the Customer and property in the ESCO's possession in which the Customer has, or may acquire, an interest; and
5. take any other action toward termination of the Work that the Customer may direct.

Thereafter, the Customer will pay the ESCO for the terminated Work the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project and, to the extent such funds are made available by the Client, the costs the ESCO actually incurs in cancelling subcontracts or supply contacts related to this Contract. However, no payments will be made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed. In the event the Customer terminates for default pursuant to Section 15.B and the basis for the default is later held invalid, such termination will automatically be deemed a termination for convenience under this Section 15.C.

D. Suspending the Work. The Customer reserves the right to suspend the Work on the Project, wholly or in part, by written stop order for such period as is necessary for the protection of the Customer's interest. The stop order remains in effect until released by the Customer, in writing. The Customer does not assume any liability for damages or loss of anticipated profits resulting from the stoppage of Work, but will grant the ESCO an extension of the Contract Time commensurate with the period of actual delay in completion of Work, if the stop order was not necessitated by the acts, failure to act, or negligence of the ESCO or a

Subcontractor. The ESCO will take all means and precautions as may be required to properly protect the finished and partially finished Work during the period or periods of the stop order.

E. ESCO Termination. If, through no fault of the ESCO, the Customer fails to make payments to the ESCO as set forth in Section 13 of this Contract and if applicable Schedule G of each Task Order, the ESCO may, after the conclusion of the Dispute resolution process described in Section 11, terminate this Contract and recover from the Customer the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project. However, no payments will be made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed.

SECTION 16. ASSIGNMENT.

A. ESCO Assignment. The ESCO may not assign this Contract or the Contract Documents or sublet it, in whole or in part, without the prior written consent of the Customer and the Client, nor shall the ESCO assign any moneys due or to become due to it under the Contract Documents without the prior written consent of the Customer and the Client. Any assignment of monies due under the Contract Documents made without the prior written consent of the Customer and the Client is void, and the assignee in that case acquires no rights against the Customer or the Client.

B. Customer Assignment. The Customer may assign this Contract to any other entity approved in advance by the ESCO and the Client, which approval shall not be unreasonably withheld or delayed.

C. Permitted Assigns. This Contract shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the Parties.

SECTION 17. OTHER CONDITIONS OR PROVISIONS.

A. Representations and Warranties. Each Party warrants and represents to the other that:

1. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

2. Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its governing documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

3. Its execution, delivery, and performance of this Contract will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and

4. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

The ESCO warrants and represents to the Customer that the disclosures and certifications set forth on Exhibit C hereto are and shall remain true and correct.

B. Time. Time is of the essence of this Contract. By executing this Contract, the ESCO confirms that the Final Acceptance Date is a reasonable period of time for performing the Work.

C. Governing Law. This Contract shall be governed by the laws of the State of Illinois, without regard to conflicts of law principles.

D. Severability. If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby; provided, however, that if enforcement of this Contract in the absence of such provision would deprive a Party of a material element of its original bargain, the Parties shall promptly negotiate in good faith a reformation of this Contract to reflect as nearly as possible all material elements of the original Contract.

E. No Waiver. No course of dealing or failure of the Customer and/or the ESCO to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Contract shall operate as a waiver of any other term, right or condition.

F. Relationship of the Parties. The ESCO is an independent contractor in providing and performing the Contract Services. Nothing in, or done pursuant to, this Contract will be construed to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Customer and the ESCO or its Subcontractors.

G. Amendment. No amendment to this Contract shall be effective until and unless reduced to writing and executed by the Parties.

H. Entire Agreement. This Contract represents the entire agreement between the Customer and the ESCO with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral.

I. Rights Cumulative. Except as otherwise provided in this Contract, (i) rights and remedies available to the Customer and/or the ESCO as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Customer and/or the ESCO in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

J. Further Assurances. Each Party hereto shall, from time to time, at the request of the other Party and without further consideration, execute and deliver and cause to be executed and delivered such other instruments and take such other actions as the requesting

Party may reasonably request to undertake the Contract Services and carry out the intent and purposes of this Contract.

K. Notices. Any information or notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be addressed as follows:

If to the Customer:

And to:

Public Building Commission of Chicago
50 West Washington, Suite 200
Chicago, IL 60602
Attention: Felicia S. Davis, Executive Director
E-mail: felicia.davis@cityofchicago.org

and

Neal & Leroy, LLC
120 North LaSalle Street, Suite 2600
Chicago, IL 60602
Attention: Langdon D. Neal, General Counsel
E-mail: lneal@nealandleroy.com

If to the ESCO:

NORESCO, LLC
One Research Drive, Suite 400C
Westborough, MA 01581
Attention: David Mannherz, Executive Vice President
Email: dmannherz@noresco.com

and

NORESCO, LLC
One Research Drive, Suite 400C
Westborough, MA 01581
Attention: Adam Nee, General Counsel
Email: anee@noresco.com

The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein before provided for.

L. Counterparts. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which counterparts shall constitute one agreement. To

facilitate execution of this Contract, the Parties may execute and exchange facsimile counterparts of the signature pages, provided originally executed signature pages are exchanged promptly thereafter.

M. Intentionally Omitted.

N. Incorporation by Reference. The recitals set forth on the first few pages of this Contract, as well as the following Exhibits attached hereto, are hereby incorporated into this Contract by this reference and expressly made a part of this Contract:

- Exhibit A: Sample Task Order Form
- Exhibit B: ESCO's Insurance Requirements
- Exhibit C: Customer Disclosures and Certifications
- Exhibit D: Client-Required Terms and Conditions
- Exhibit E: Project Participation Guidelines:
Affirmative Action Ordinance Revised Appendix D of the
Metropolitan Water Reclamation District of Greater Chicago
- Exhibit F: Multi-Project Labor Agreement
- Exhibit G: Required Maintenance
- Exhibit H: Additional Performance of Work Requirements

O. Task Order Schedule. Each Authorized Task Order shall include the following schedules:

- Schedule A: Project Description
- Schedule B: Performance Guarantee
- Schedule C: Methodology and Baseline
- Schedule D: Certificate of Insurance
- Schedule E: MBE, WBE, and SBE Utilization Plan Submission

Optional Schedules:

- Schedule F: Performance Tracking Services
- Schedule G: Performance Tracking Services Payments

[Signature Page Follows]

NOW THEREFORE, the duly authorized representatives of the parties have executed this Agreement

PUBLIC BUILDING COMMISSION OF CHICAGO:

Rahm Emanuel
Mayor Rahm Emmanuel
Chairman

Date: _____

ATTEST:

Lori Ann Lypson
Secretary

Date: 8/23/16

NORESCO, LLC:

David G. Mannherz
Name: David G. Mannherz
Executive Vice President and Chief Financial Officer

Date: 8/18/2016

AFFIX CORPORATE
SEAL, IF ANY, HERE

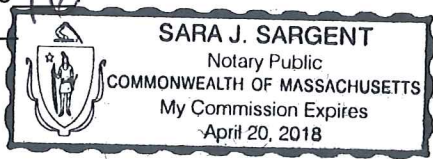
County of: Worcester

State of: Massachusetts

Subscribed and sworn to before me by David G. Mannherz and _____
on behalf of NORESKO this 18th day of August, 2016

Sara Sargent
Notary Public

My Commission expires: April 20, 2018
(SEAL OF NOTARY)



Approved as to form and legality
Anne L. Zredd
Neal & Leroy, LLC

Date: 8-24-16

EXHIBIT A
SAMPLE TASK ORDER FORM

_____ (Date)

David G. Mannherz
Executive Vice President and Chief Financial Officer
NORESKO, LLC
One Research Drive, Suite 400C
Westborough, MA 01581

Task Order / Notice of Award

Contract Number: PS2078
Task Order Number: _____
Project Name: Guaranteed Energy Savings Project
Services: _____
User Agency: Metropolitan Water Reclamation District of Greater Chicago

1. This Task Order No. _____ ("Task Order"), executed between NORESKO and Customer (Public Building Commission of Chicago) and dated _____, is issued pursuant to the terms and conditions of the Guaranteed Energy Performance Contract dated _____, between NORESKO and Customer (the "Agreement").
2. The Scope of Services applicable to this Task Order are set forth herein (including all Schedules and Attachments).
3. Customer hereby requests that NORESKO complete the Work described in this Task Order and NORESKO agrees to complete the Work described in this Task Order in accordance with the Schedules and Attachments hereto.
4. The following Schedules are attached hereto and incorporated herein in their entirety:

Schedule A: Project Description

Schedule A-1-1: Commissioning

Schedule A-1-2: Training

Schedule A-1-3: Implementation

Schedule A-1-4: Schedule of Values

Schedule A-1-5: Warranty

Schedule A-1-6: Key Personnel

Schedule B: Performance Guarantee

Schedule C: Methodology and Baseline

Schedule D: Certificate of Insurance

Schedule E: Form of MBE, WBE, and SBE Utilization Plan Submission

Optional Schedules:

Schedule F: Performance Tracking Services

Schedule G: Performance Tracking Services Payments

5. The applicable compliance goals for this Task Order are as follows:

MBE: _____%, WBE: _____% SBE: _____%

6. The value of this Task Order is a lump sum \$ _____, as further described in Schedule A-1-4.

7. The Substantial Completion date for this Task Order is _____.

8. The PBC Authorized Representative for this Task Order is _____.

9. A duly executed Notice to Proceed (NTP) is forthcoming. This NTP will authorize NORESKO to complete the Work described herein.

IN WITNESS WHEREOF, the Parties have executed this Task Order.

NORESKO, LLC:

By: _____ Date: _____

Name: David G. Mannherz

Title: Executive Vice President and Chief Financial Officer

Public Building Commission of Chicago

By: _____ Date: _____

Name: Raven A. DeVaughn

Title: PBC Director of Procurement

By: _____ Date: _____

Name: Lori Ann Lypson

Title: PBC Chief Operating Officer

Schedule A: Project Description

Schedule A attached to each Task Order will provide the scope of work to be implemented upon execution of the Task Order and the pricing for each Task Order. Schedule A will also include the following subsections:

Schedule A-1-1: Commissioning

This subsection will describe any commissioning work to be performed by NORESKO pursuant to the Task Order.

Schedule A-1-2: Training

This subsection will describe any training to be provided by NORESKO pursuant to the Task Order.

Schedule A-1-3: Implementation

This subsection will describe the implementation plan and schedule for the ECM(s) covered by the Task Order.

Schedule A-1-4: Schedule of Values

This subsection will include the Contract Sum for the Task Order and include a draft construction draw schedule.

Schedule A-1-5: Warranty

This subsection will include the warranty information for the ECM(s) covered by the Task Order.

Schedule A-1-6: ESCO's Key Personnel

This subsection will include a list of the ESCO's key personnel who will be responsible for supervising the performance of the Contract Services.

A general description of all work anticipated to be performed pursuant to this Agreement following in the Overall Project Description. Notwithstanding the Overall Project Description, each party shall only have obligations with respect to ECMs that are authorized through Task Orders that have been executed by both Parties.

OVERALL PROJECT DESCRIPTION

Section I. Overview Description of the Facilities

The following Metropolitan Water Reclamation District (MWRD) facilities are included in the overall Guaranteed Energy Savings Project (GESp), consisting of six main water reclamation plants (WRP) and selected remote pumping and aeration stations:

No.	Facility	Address
1	Calumet WRP	400 East 130th Street, Chicago
2	Egan WRP	550 South Meacham Road, Schaumburg
3	Hanover Park WRP	1200 East Sycamore, Hanover Park
4	Kirie WRP	701 West Oakton Street, Des Plaines
5	OWRP WRP	3500 West Howard Street, Skokie
6	Stickney WRP	6001 West Pershing Road, Cicero,
7	125th St PS	125th St, Chicago
8	Devon Aeration	3253 West Devon Avenue, Chicago
9	Evanston PS	1455 Elmwood Avenue, Evanston
10	Hamilton Reservoir	1037 Smith St, Palatine
11	LASMA	7601 S. LaGrange Rd., Willow Springs
12	Lockport Power House	2400 S. Power House Rd., Lockport, IL, 60441
13	Mainstream PS	6100 S. River Road, Hodgkins
14	Majewski Reservoir	200 Jarvis Avenue, Des Plaines
15	Middlefork Reservoir	Rudolph Drive, Northbrook
16	O'Hare Reservoir	2100 East Higgins Road, Elk Grove Village
17	Racine PS	3838 S. Racine, Chicago
18	Reimer RV	N. Quentin & Palatine, Palatine
19	Upper Des Plaines PS	North Avenue and Thatcher Avenue, River Forest
20	Walters PS	4185 Walters Avenue, North Brook
21	Webster Aeration	2159 North Ashland Avenue, Chicago
22	Wellington PS	2220 West Wellington Avenue, Chicago
23	Westchester PS	Gardner Road and Roosevelt Road, Westchester

Section II. Overview Description of ECMs

Listed below are the potential Energy Conservations Measures to be included in the overall Guaranteed Energy Savings Project (GESp) at the six main water reclamation plants (WRP) and selected pumping and aeration stations.

No.	Locations	ECM No.	ECM Description
1	Calumet WRP	ECM - 1	▪ LED Interior Lighting Upgrades
		ECM - 2	▪ Steam Blanket Insulation
		ECM - 3	▪ Controls Upgrade
2	Egan WRP	ECM - 1	▪ LED Interior Lighting Upgrades
		ECM - 2	▪ Steam Blanket Insulation
		ECM - 3	▪ Controls Upgrade
3	Hanover Park WRP	ECM - 1	▪ LED Interior Lighting Upgrades
4	Kirie WRP	ECM - 1	▪ LED Interior Lighting Upgrades
		ECM - 3	▪ Controls Upgrade
5	O'Brien WRP	ECM - 1	▪ LED Interior Lighting Upgrades
		ECM - 2	▪ Steam Blanket Insulation
		ECM - 3	▪ Controls Upgrade
6	Stickney WRP	ECM - 1	▪ LED Interior Lighting Upgrades
		ECM - 3	▪ Controls Upgrade
7	125th St PS	ECM - 4	▪ Boiler Replacement
8	Devon AS	ECM - 1	▪ LED Interior Lighting Upgrades
9	Evanston PS	ECM - 1	▪ LED Interior Lighting Upgrades
10	Hamilton RV	ECM - 1	▪ LED Interior Lighting Upgrades
11	Lasma	ECM - 1	▪ LED Interior Lighting Upgrades
12	Lockport PH	ECM - 1	▪ LED Interior Lighting Upgrades
13	Mainstream PS	ECM - 1	▪ LED Interior Lighting Upgrades
14	Majewski PS	ECM - 1	▪ LED Interior Lighting Upgrades
15	Middlefork RV	ECM - 1	▪ LED Interior Lighting Upgrades
16	O'Hare PS	ECM - 1	▪ LED Interior Lighting Upgrades
17	Racine PS	ECM - 1	▪ LED Interior Lighting Upgrades
18	Riemer RV	ECM - 1	▪ LED Interior Lighting Upgrades
19	Upper Des Plaines PS	ECM - 1	▪ LED Interior Lighting Upgrades
20	Walters PS	ECM - 1	▪ LED Interior Lighting Upgrades
21	Webster AS	ECM - 1	▪ LED Interior Lighting Upgrades
22	Wellington PS	ECM - 1	▪ LED Interior Lighting Upgrades
23	Westchester PS	ECM - 1	▪ LED Interior Lighting Upgrades

The following is a brief description of the potential Energy Conservations to be included in the overall Guaranteed Energy Savings Project (GESp),

ECM – 1: LED Interior Lighting Upgrades

This measure includes retrofitting or replacing existing light fixtures with high efficiency, long-life LED technologies. Specific locations and fixtures to be retrofitted or replaced will be described in each individual construction work order.

ECM - 2: Steam Blanket Insulation

This measure includes designing and installing blanket type thermal insulation for steam traps and steam fittings. The removable blanket insulation will be custom engineered for each trap and fitting. Specific locations and traps and fittings to be insulated will be described in each individual construction work order.

ECM - 3: Control System Upgrades

This measure includes implementing control system upgrades in order to execute more energy efficient control strategies. Specific locations and control system upgrades to be implemented will be described in each individual construction work order.

ECM - 4: Boiler Replacement

This measure includes replacing two existing boilers at the 125th St. pumping station with new fire-tube steam boilers. A more detailed description of the scope of work will be described in the individual construction work order.

Schedule B: Performance Guarantee

Schedule B to each Task Order shall include a description of the Guaranteed Annual Savings Amount associated with each Task Order.

Schedule C: Methodology and Baseline

Schedule C to each Task Order shall include a description of the energy usage baseline and the methodology for measurement and verification of energy savings.

Schedule D: Certificate of Insurance

Schedule D to each Task Order shall include a Certificate of Insurance that conforms with Section 9.

Schedule E: Form of MBE, WBE, and SBE Utilization Plan Submission
Each Task Order shall include MWRD's Appendix D requirement as applicable to the scope of work.

**METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO**

MBE, WBE, SBE UTILIZATION PLAN

For Local and Small business entities - Definitions for terms used below can be found in Appendix D: MBE - Section 5(s); WBE - Section 5(cc); SBE - Section 5(w).

NOTE: The Bidder shall submit with the Bid, originals or facsimile copies of all MBE, WBE, SBE Subcontractor's Letter of Intent furnished to all MBEs, WBEs, and SBEs. IF A BIDDER FAILS TO INCLUDE signed copies of the MBE, WBE, SBE Utilization Plan and all signed MBE, WBE, SBE Subcontractor's Letter of Intent with its bid, said bid will be deemed nonresponsive and rejected.

All Bidders must sign the signature page UP-5 of the Utilization Plan, even if a waiver is requested.

Name of Bidder: _____

Contract No.: _____

Affirmative Action Contact & Phone No.: _____

E-Mail Address: _____

Total Bid: _____

MBE, WBE, SBE UTILIZATION PLAN AND ALL SIGNED MBE, WBE, SBE SUBCONTRACTOR'S LETTER OF INTENT MUST BE COMPLETED, SIGNED AND ACCOMPANY YOUR BID!!!

The bidder should indicate on the Utilization Plan explicitly if the dollar amounts for the MBE participation will also be counted toward the achievement of its SBE participation. See Affirmative Action Ordinance, Revised Appendix D, Section 11, Counting MBE, WBE and SBE Participation towards Contract Goals. (a) (b) (c)

MBE UTILIZATION

Name of MBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

If the MBE participation will be counted towards the achievement of the SBE goal please indicate here: YES NO

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid!!!

MBE UTILIZATION

Name of MBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

If the MBE participation will be counted towards the achievement of the SBE goal please indicate here: YES NO

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid!!!

MBE UTILIZATION

Name of MBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

If the MBE participation will be counted towards the achievement of the SBE goal please indicate here: YES NO

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid!!!

(Attach additional sheets as needed)

The bidder should indicate on the Utilization Plan explicitly if the dollar amounts for the WBE participation will also be counted toward the achievement of its SBE participation. See Affirmative Action Ordinance, Revised Appendix D, Section 11, Counting MBE, WBE and SBE Participation towards Contract Goals. (a) (b) (c)

WBE UTILIZATION

Name of WBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

If the WBE participation will be counted towards the achievement of the SBE goal please indicate here:

YES

NO

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid! ! !

WBE UTILIZATION

Name of WBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

If the WBE participation will be counted towards the achievement of the SBE goal please indicate here:

YES

NO

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid! ! !

WBE UTILIZATION

Name of WBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

If the WBE participation will be counted towards the achievement of the SBE goal please indicate here:

YES

NO

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid! ! !

(Attach additional sheets as needed)

SBE UTILIZATION

Name of SBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid !!

SBE UTILIZATION

Name of SBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid !!

SBE UTILIZATION

Name of SBE and contact person: _____

Business Phone Number: _____ Email Address: _____

Address: _____

Description of Work, Services or Supplies to be provided: _____

CONTRACT ITEM NO.: _____

Total Dollar Amount Participation: _____

(Attach additional sheets as needed)

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid !!

SIGNATURE SECTION

On Behalf of _____ I/We hereby acknowledge that
(name of company)

I/WE have read Revised Appendix D, will comply with the provisions of Revised Appendix D, and intend to use the MBEs, WBEs, and SBEs listed above in the performance of this contract and/or have completed the Waiver Request Form. To the best of my knowledge, information and belief, the facts and representations contained in this Exhibit are true, and no material facts have been omitted.

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the bidder, to make this affidavit.

Date

Signature of Authorized officer

ATTEST:

Print name and title

Secretary

Phone number

- 1) The Bidder is required to sign and execute this page, EVEN IF A WAIVER IS BEING REQUESTED.**
- 2) Failure to do so will result in a nonresponsive bid and rejection of the bid.**
- 3) If a waiver is requested, the bidder must also complete the following "WAIVER REQUEST FORM."**

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid! !!

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WAIVER REQUEST FORM

If a waiver is requested, the Bidder is required to sign and execute this page.

Contract No.: _____

Name of Bidder: _____

Contact Person and Phone Number: _____

With respect to the contract specified above, the Bidder hereby requests a total or partial waiver of the requirement that, pursuant to Section 12 (a)-(d) of the Affirmative Action Ordinance, Revised Appendix D, it files a MBE, WBE, SBE Utilization Plan or achieve a particular goal for MBE, WBE, SBE participation in the contract. The reasons for the request are as follows:

On Behalf of _____ I/We hereby acknowledge that
(name of company)

I/WE have read Affirmative Action Ordinance, Revised Appendix D, will comply with the provisions of Affirmative Action Ordinance, Revised Appendix D, and intend to use the MBEs, WBEs, and SBEs listed in the MBE, WBE, SBE Utilization Plan in the performance of this contract and have completed the Waiver Request Form. To the best of my knowledge, information and belief, the facts and representations contained in this Waiver Request Form are true, and no material facts have been omitted.

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

Date

Signature of Authorized officer

ATTEST:

Print name and title

Secretary

Phone number

NOTE TO BIDDERS

All Waiver requests are evaluated carefully by the District. **The evaluation is based on your firm's documented GOOD FAITH EFFORTS.**

The GOOD FAITH EFFORTS MUST be Undertaken PRIOR to your bid submittal to the District.

Good Faith Efforts are identified on pp. D15-D16, Section 12. Utilization Plan Submission (e), (i)(i)-(xi).

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid!!!

REVISED JUNE, 2015

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MBE, WBE, SBE SUBCONTRACTOR'S LETTER OF INTENT

To: (Name of Bidder) _____ and the MWRDGC

RE: Contract Name: (Insert Name) _____

Contract Number: (Insert Number) _____

From: (Name of MBE/WBE/SBE Firm) _____ MBE: Yes ___ No ___
WBE: Yes ___ No ___
SBE: Yes ___ No ___

The MBE/WBE status of the undersigned is confirmed by the attached letter of Certification. A certification letter must be attached hereto.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

If more space is needed to fully describe the MBE/WBE/SBE firms' proposed scope of work and/or payment schedule, attach additional sheets.

The above described performance is offered for the following total price:

\$ _____
(Written in Figures) (Written in Words)

In the event of a discrepancy between the "Written in Words" price and the "Written in Figures" price, the "Written in Words" price shall govern."

The undersigned will enter into a formal written agreement for the above work with the Prime Contractor, conditioned upon the execution of a contract by the Prime contractor with the MWRDGC.

(Signature of Owner, President or Authorized Agent of MBE/WBE/SBE)

Name/Title (Print)

Date _____ Phone _____

**THIS SIGNED DOCUMENT MUST BE SUBMITTED WITH THE BID.
FAILURE TO DO SO WILL RESULT IN A NONRESPONSIVE BID AND
REJECTION OF THE BID.**

All bidders shall submit with the Bid, copies of MBE, WBE, SBE Subcontractor's Letter of Intent in paper form with signatures, which were furnished to each MBE, WBE, and SBE listed in its MBE, WBE, SBE Utilization Plan and must be submitted to the District with its bid as part of its bid packet with either a copy of each MBE, WBE, and SBE current Letter of Certification from a state or local government or agency or documentation demonstrating that the MBE, WBE, SBE is a MBE, WBE or SBE within the meaning of this Revised Appendix D. Failure to submit the MBE, WBE, SBE Subcontractor's Letter of Intent signed by each MBE, WBE, SBE subcontractor will be viewed as nonresponsive and the bid will be rejected. All MBE, WBE, SBE Subcontractor's Letter of Intent must conform to the MBE, WBE, SBE Utilization Plan submitted with the bid. An original or facsimile copy of MBE, WBE, SBE Subcontractor's Letter of Intent will be acceptable.

The MBE, WBE, SBE Utilization Plan and the MBE, WBE, SBE Subcontractor's Letter of Intent MUST Accompany the Bid!!

Schedule F: Performance Tracking Services

Schedule F to each Task Order shall include a description of the performance tracking services to be performed by the ESCO.

Schedule G: Performance Tracking Services Payments

Schedule G to each Task Order shall include the payment amounts for the performance tracking services. These Performance Tracking Services are not part of the base scope of work described in Exhibit A or included in the contract sum or Schedule of Values shown in Schedule A-1-4. Tracking services cannot be paid for except with the express prior approval of the MWRD Board, and the PBC Board. PBC or MWRD may elect to cancel the performance guarantee and these associated services for any annual period.

Exhibit B: ESCO's Insurance Requirements

I. The ESCO shall provide the following minimum insurance coverages:

1. **Commercial General Liability** (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations (for minimum of two (2) years following project completion), flood, explosion, collapse, underground hazards, separation of insureds, defense and contractual liability. The ESCO and all subcontractors of every tier will specifically name the Customer, the Commission, the Client, the Client agency/property owner of each project (and the respective Commissioners, Officers, Agents and Employees of the Customer, Commission and Client), the Lender and others as may be required by the Customer as Additional Insured on a primary and non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client, where required by written contract for any liability arising directly or indirectly from the work including the two (2) years completed operations period using the ISO CG2010 (0704) and CG2037 (0704) or equivalent. Coverage will include a waiver of subrogation as required below. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section but such policies will respond on a primary and non-contributory basis to any insurance or self-insurance of the Customer and Client.

The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO must provide copies of this endorsement with the certificate of insurance required below. The ESCO must ensure that Subcontractors maintain this endorsement on their policies. Such coverage is required only when the ESCO's work is within 50 feet of such rail right-of-way.

Subcontractors performing work for the ESCO must maintain limits of not less than \$2,000,000 per occurrence with the same terms herein.

2. **Automobile Liability** (Primary and Umbrella)

When any motor vehicles (owned, non-owned, leased and hired) are used in connection with work to be performed, the ESCO must provide Automobile Liability Insurance, with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The Customer, the Commission, the City of Chicago, the Client, and the client agency/property owner of each project (and the respective Commissioners, Officers, Agents and Employees of the Customer, Commission and Client), the Lenders and others as may be required by the Customer as designated in the scope of work are to be named as Additional Insureds on a primary, non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section.

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

3. Workers' Compensation and Employers Liability

Workers' Compensation Insurance as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident, illness or disease. Coverage will include a waiver of subrogation as required below.

4. Professional Liability

Professional Liability Insurance must be maintained with limits of not less than \$5,000,000 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, including those resulting in a pollution incident. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work under this Contract. 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 professional services for the ESCO must maintain limits of not less than \$1,000,000 with the same terms herein.

5. Contractors' Pollution Liability

Contractors' Pollution coverage is required with limits of not less than \$5,000,000 per occurrence for any portion of the services, which may entail, exposure to any pollutants, whether in the course of sampling, remedial work or any other activity under this Contract. The Contractors' Pollution liability policy will provide coverage for sums that the insured become legally obligated to pay as loss as a result of claims for bodily injury, property damage and/or clean-up costs caused by any pollution incident arising out of the Work including remediation operations, transportation of pollutants, owned and non-owned disposal sites and any and all other activities of the ESCO and its subcontractors. Pollution incidents will include, but not be limited to, the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, asbestos, silica, hydrocarbons and microbial matter, including fungi which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.

The policy will be maintained for a period of three years after final completion and include completed operations coverage. The policy will include the Customer, the Client and the client agency/property owner of each project (and the respective Commissioners, Officers, Agents and Employees of the Customer, Commission and Client), the Lender and others as may be required by the Customer, as Additional Insured on a primary and non-contributory basis for on-going and completed operations with respect to liability arising out of operations of ESCO, and/or its subcontractors, on behalf of Customer and/or Client. Subcontractors performing work for the ESCO must

maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

6. Builders Risk/Installation Floater

The ESCO must provide All Risk Builders Risk/Installation Floater insurance or equivalent on a replacement cost basis for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must be on an All Risk basis including, but are not limited to, the following: right to partial occupancy, collapse, water damage including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, false work, fences, and temporary structures, resulting damage from faulty workmanship or materials, ordinance and Law, and equipment stored off site or in transit. The Customer and the Client are to be Additional Insureds on the policy. The client agency/property owner of each project and the Lender are to be loss payees on the policy. Coverage must remain in place until at least Substantial Completion.

The ESCO is responsible for all loss or damage to personal property including but not limited to materials, equipment, tools, and supplies owned, rented, or used by ESCO.

7. Railroad Protective Liability

When work is to be performed within fifty (50) feet of the rail right-of-way, the ESCO shall ensure that Railroad Protective Liability insurance in the name of the railroad or transit entity remains in force during the course of construction of the project entity for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. Limits shall be in the amount required by the railroad or transit entity.

The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO and subcontractors must provide copies of this endorsement with the certificate of insurance required below.

8. Umbrella.

The General Liability, Automobile and Workmen's Compensation policy limits described above may be provided in combination with any umbrella liability policy maintained by the ESCO. These policies will be primary and non-contributory to any insurance or self-insurance of the Customer and Client.

II. Policies described in Section I above shall be subject to the following:

1. Such certificates and policies must be in a form acceptable to the Customer and from companies with a general rating of A minus, and a financial size category of Class VII or better, in Best's Insurance Guide. In accordance with ISO ACORD Form 25 (2010/05), should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions; provided ESCO shall provide Customer at least thirty (30) days' prior written notice of the cancellation, non-renewal (without replacement) or material reduction of coverage or limits of any policy of insurance referred to herein.

2. The ESCO must, at all times during the term of this Contract, maintain and keep in force, at the Company's expense, the insurance coverages provided above.

3. In the event of a claim or litigation the Customer reserves the right to obtain applicable portions of insurance policies and records from the ESCO and/or its Subcontractors at any time upon written request, redacted to delete any ESCO confidential information not relevant to the claim, litigation or intended coverage.

4. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by the ESCO.

5. The Company hereby waives and agrees that their insurers waive their rights of subrogation against the Customer and the Client, and their respective Board members, employees, elected officials, agents or representatives.

6. Unless otherwise stated herein, the insurance coverage and limits furnished by the ESCO in no way limit the ESCO's liabilities and responsibilities specified within this Contract or by law.

7. Any insurance or self-insurance programs maintained by the Customer and Client do not contribute with insurance provided by the ESCO under this Contract.

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

9. The ESCO must require all its Subcontractors to provide the insurance required in this Contract, or ESCO may provide the coverage for its Subcontractors. All its Subcontractors are subject to the same insurance requirements of the ESCO unless otherwise specified in this Contract.

10. If the ESCO or its Subcontractors desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

11. The Customer maintains the rights to modify, delete, alter or change these requirements upon written notice to the ESCO. Documented increased costs resulting from revised insurance requirements may be submitted as a Change Order increasing the Contract Sum.

Exhibit C: Customer Disclosures and Certifications

CUSTOMER DISCLOSURES AND CERTIFICATIONS

Name: NORESCO, LLC

Address: One Research Drive, Suite 400C, Westborough, MA 01581

Telephone No.: (508) 614-1000

Federal Employer I.D. #: 90-0453168 Social Security #: _____

Nature of Transaction:

- Sale or purchase of land
- Construction Contract
- Professional Services Agreement
- Other - Guaranteed Energy Performance Contract

Instructions: FOR USE WITH ANY OF THE ABOVE TRANSACTIONS. Anyone proposing one of the above transactions with the Public Building Commission of Chicago must complete this Disclosure Affidavit. Please note that in the event the Contractor is a joint venture, the joint venture and each of the joint venture partners must submit a completed Disclosure Affidavit.

The undersigned Dave Mannherz, as Executive Vice President and CFO
(Name) (Title)

and on behalf of NORESCO, LLC
("Bidder/ Proposer" or "Contractor") having been duly sworn under oath certifies that:

1. DISCLOSURE OF OWNERSHIP INTERESTS

All bidders/proposers shall provide the following information with their bid/proposal. If the question is not applicable, answer "NA". If the answer is none, please answer "none".

- Bidder/Proposer is a:
- Corporation
 - Partnership
 - Joint Venture
 - Sole Proprietorship
 - Not-for-Profit Corporation
 - Other - Limited Liability Company

Supplement to NORESKO's Response to Section 1.c

For convenience, the list below only contains the Executive Officers of NORESKO, LLC. The numerous administrative officers were omitted. No officer of NORESKO, LLC owns any portion of the company.

OFFICERS	TITLE
Neil Petchers	President and CEO
David G. Mannherz	Executive Vice President, CFO, and Treasurer
Adam Nee	Secretary and Vice President
Michael Beccaria	Senior Vice President
Wade Carleton	Senior Vice President
Randall Clark	Senior Vice President
Paul Pimentel	Senior Vice President
William Foster	Vice President
Pablo Hernandez	Vice President
Gerard Reilley	Vice President
Troy Walters	Vice President

Supplement to NORESKO's Response to Section 1.f

NORESKO, LLC—a Delaware limited liability company—is a wholly-owned indirect subsidiary of United Technologies Corporation (NYSE: UTX). NORESKO, LLC is 100% owned by NORESKO, Inc. NORESKO, Inc. is 100% owned by Carrier Corporation. Carrier Corporation is 100% owned by United Technologies Corporation.

SECTION 2. PARTNERSHIPS

- a. If the bidder/proposer is a partnership, indicate the name of each partner and the percentage of interest of each therein.

Name of Partners (Print or Type)	Percentage Interest
_____	_____ %
_____	_____ %
_____	_____ %

SECTION 3. SOLE PROPRIETORSHIP

- a. The bidder/proposer is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes [] No []
If NO, complete items b. and c. of this Section 3.
- b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

Name(s) of Principal(s). (Print or Type)

- c. If the interest of a spouse or any other party is constructively controlled by another person or legal entity, state the name and address of such person or entity possessing such control and the relationship under which such control is being or may exercised.

Name(s)	Address(es)
_____	_____
_____	_____
_____	_____

SECTION 4. LAND TRUSTS, BUSINESS TRUSTS, ESTATES & OTHER ENTITIES

If the bidder/proposer is a land trust, business trust, estate or other similar commercial or legal entity, identify any representative, person or entity holding legal title as well as each beneficiary in whose behalf title is held including the name, address and percentage of interest of each beneficiary.

Name(s)	Address(es)
_____	_____
_____	_____
_____	_____

SECTION 5. NOT-FOR-PROFIT CORPORATIONS

a. State of incorporation _____

b. Name of all officers and directors of corporation (or attach list):

Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NOTE: The Public Building Commission of Chicago may require additional information from any entity or individual to achieve full disclosure relevant to the transaction. Further, any material change in the information required above must be provided by supplementing this statement at any time up to the time the Public Building Commission of Chicago takes action on the contract or other action requested of the Public Building Commission of Chicago.

II. CONTRACTOR CERTIFICATION

A. CONTRACTOR

1. The Contractor, or any subcontractor to be used in the performance of this contract, or any affiliated entities of the Contractor or any such subcontractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, any such subcontractor or any such affiliated entity, acting pursuant to the direction or authorization of a responsible official thereof has not, during a period of three years prior to the date of execution of this certification or if a subcontractor or subcontractor's affiliated entity during a period of three years prior to the date of award of the subcontract:
 - a. Bribed or attempted to bribe, or been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States (if an officer or employee, in that officer's or employee's official capacity); or
 - b. Agreed or colluded, or been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
 - c. Made an admission of such conduct described in 1(a) or (b) above which is a matter of record but has not been prosecuted for such conduct.
2. The Contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging² in violation of Section 3 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-3), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of submittal of this bid, proposal or response.³
3. The Contractor or any agent, partner, employee, or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rotating⁴ in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating.
4. The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code entitled "Office of the Inspector General" and all provisions of the Public Building Commission Code of Ethics Resolution No.5339, as amended by Resolution No. 5371.

5. The Contractor certifies to the best of its knowledge and belief, that it and its principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state or local department or agency;
 - b. Have not within a three-year period preceding this bid or proposal been convicted of or had a civil judgement rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
 - d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

B. SUBCONTRACTOR

1. The Contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.
2. The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such

subcontractors to certify as to Section II(A)(5). In the event any subcontractor is unable to certify to Section II(A)(5), such subcontractor shall attach an explanation to the certification.

3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section II(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Public Building Commission of Chicago upon request.
4. The Contractor will not, without the prior written consent of the Public Building Commission of Chicago, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.
5. The Contractor hereby agrees, if the Public Building Commission of Chicago so demands, to terminate its subcontractor with any subcontractor if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontractor as required by this certification.

C. STATE TAX DELINQUENCIES

1. The Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, the contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or amount of the tax.
2. Alternatively, the contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.
3. If the Contractor is unable to certify to any of the above statements [(Section II (C))], the Contractor shall explain below. Attach additional pages if necessary.

4. If any subcontractors are to be used in the performance of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any subcontractor is unable to certify to any of the statements in this certification, such subcontractor shall attach an explanation to this certification.

D. OTHER TAXES/FEES

1. The Contractor is not delinquent in paying any fine, fee, tax or other charge owed to the City of Chicago.
2. If Contractor is unable to certify to the above statement, Contractor shall explain below and attach additional sheets if necessary.

E. ANTI-COLLUSION

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of the bid will make the bid nonresponsive and not eligible for award consideration.

F. PUNISHMENT

A Contractor who makes a false statement material to Section II(A)(2) of this certification commits a Class 3 felony. 720 ILCS 5/33E-11(b).

G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

1. The Contractor is not a party to any pending lawsuits against the City of Chicago or the Public Building Commission of Chicago nor has Contractor been sued by the City of Chicago or the Public Building Commission of Chicago in any judicial or administrative proceeding.
2. If the Contractor cannot certify to the above, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each such judicial or administrative proceeding. Attach additional sheets if necessary.

III. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE

- A. Neither the Contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction⁵, (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or other Environmental Restriction.

If the Contractor cannot make the certification contained in Paragraph A of Section III, identify any exceptions:

(Attach additional pages of explanation to this Disclosure Affidavit, if necessary.)

- B. Without the prior written consent of the Public Building Commission of Chicago, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.
- C. Until completion of the Contract's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE

For purpose of this Section IV, "SUBSTANTIAL OWNER" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, state or other legal entity in which the individual holds an interest or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a twenty percent (20%) interest in Contractor, and an individual or entity has a fifty percent (50%) or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten (10%) or percentage of interest in the Contractor. In this case, the response to this Section IV, must cover such individual(s) or entity. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

If Contractor's response in this Section IV is 1 or 2, then all of the Contractor's Substantial Owners must remain in compliance with any such child support obligations (1) throughout the term of the contract and any extensions thereof; or (2) until the performance of the contract is completed, as applicable. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either 1 or 2 constitutes an event of default.

Check one:

1. No Substantial Owner has been declared in arrearage on his or her child support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.
2. _____ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.
3. _____ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support for the payment of all such child support owed; or both (1) and (2).
4. _____ There are no Substantial Owners.

V. INCORPORATION INTO CONTRACT AND COMPLIANCE

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Public Building Commission of Chicago's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

VI. VERIFICATION

Under penalty of perjury, I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor set forth on page 1, that I have personal knowledge of all the certifications made herein and that the same are true.



Signature of Authorized Officer

Dave Mannherz

Name of Authorized Officer (Print or Type)

Executive Vice President and CFO

Title

(508) 614-1000

Telephone Number

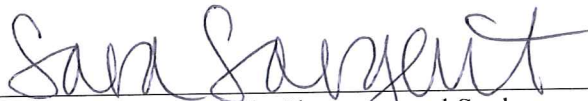
State of Massachusetts

County of Worcester

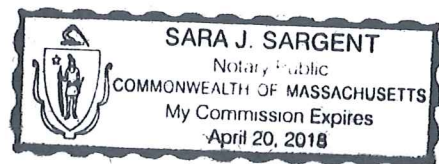
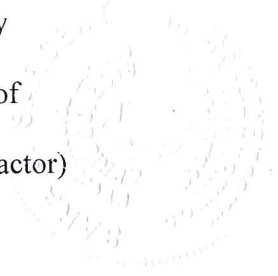
Signed and sworn to before me on this 18 day of August, 2016 by

Dave Mannherz (Name) as Executive Vice President and CFO (Title) of

NORESCO, LLC (Bidder/Proposer or Contractor)



Notary Public Signature and Seal



Notes 1-5 Disclosure Affidavit

1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership; identify of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.
2. For purposes of Section II (A) (2) of this certification, a person commits the offense of and engages in bid-rigging when he knowingly agrees with any person who is, or but for such agreement should be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent noncollusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted. see 720 ILCS 5/33-E-3.
3. No corporation shall be barred from contracting with any unit of state or local government as a result of a conviction, under either Section 33E-3 or Section 33E-4 of Article 33 of the State of Illinois Criminal Code of 1961, as amended, of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of the State of Illinois Criminal Code.
4. For purposes of Section II(A) of this certification, a person commits the offense of and engages in bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes hereof, shall include at least three contract bids within a period of ten years, the most recent of which occurs after January 1, 1989) of submitting sealed bids to units of state or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. See 720 ILCS 5/33E-4.
5. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants including but not limited to (1) Section 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapter 7-28 or 11-4 of the Municipal Code of Chicago; (2) Comprehensive Environment Response and Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) the Hazardous Material

Transportation Act (49 U.S.C. § 1801 *et seq.*); (4) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 7401 *et seq.*); (5) the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (6) the Clean Air Act (42 U.S.C. § 7401 *et seq.*); (7) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*); (8) the Safe Drinking Water Act (42 U.S.C. § 300f); (9) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 *et seq.*); (10) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

Exhibit D: Client-Required Terms and Conditions

Water Reclamation District Law

Article 1. The Contractor hereby agrees to carry on all the work provided for in this Contract in strict conformity with the requirements of the law under which the Metropolitan Water Reclamation District of Greater Chicago (MWRD) is organized, entitled "An Act to create Sanitary Districts and to remove obstructions from the Des Plaines and Illinois Rivers," approved May 29, 1889, in force July 1, 1889, and all acts amendatory thereof and supplementary thereto (70 ILCS 2605). The Contractor shall comply with the Illinois Human Rights Act, Art.2, 775 ILCS 5/2-101-5/2-105.

Laws, Ordinances, Permits and Taxes

Article 2. The Contractor shall obtain all permits and certificates required by the municipalities within which the work is being performed, or which may be required by any governmental agency having proper jurisdiction, without additional expense to the MWRD, and shall strictly comply with all ordinances, statutes and regulations of the MWRD, the municipalities within which the work is being carried on, the State of Illinois, and the United States Government, and any governmental agency having proper jurisdiction, in any manner affecting the work hereunder or controlling or limiting in any way the actions of those engaged on work pertaining to this Contract.

The Contractor shall save and keep the MWRD harmless from any liability or expense incurred because of said permits, ordinances, statutes or regulations or violations thereto.

At the pre-construction meeting the Contractor will provide the Engineer with copies of all regulatory and environmental permits, approvals, certificates, and inspection fee receipts relative to the Illinois Environmental Protection Act. (415 ILCS 5/). Thereafter, new copies of these documents will be given to the Engineer within 24 hours of receipt.

The MWRD is not liable for the Illinois Retailer's Occupational Tax, the Service Occupation Tax, the Service Use Tax, or Transportation Tax. The Illinois Exemption Identification Number is indicated on the Proposal form of the Contract Document. No payment will be made for taxes from which the MWRD is exempt.

The parties agree that any lawsuit concerning this contract, its breach, or work done hereunder, shall be brought in the Circuit Court of Cook County, Illinois. The Contract (also referred to as "Agreement") will be construed under Illinois law, which will prevail in the event of any conflict of law.

Wage Rates/Employment

Article 3a. The Contractor shall comply with the Prevailing Wage Act, 820 ILCS 130/0.01 et. seq. Current prevailing wage rates for Cook County and/or Fulton County are determined by the Illinois Department of Labor. It is the responsibility of the Contractor to obtain and comply with any revisions to the rates should they change during the duration of the Contract.

Article 3b. The Contractor shall comply with Employment of Illinois Workers on Public Works Act, 30 ILCS 570/0.01 et. seq. The Act indicates that the level of unemployment in the State of Illinois is measured by the United States Bureau of Labor Statistics in its monthly

publication of employment and unemployment figures. It is the responsibility of the Contractor to determine the level of unemployment in the State of Illinois, and to employ only Illinois laborers when required by the Act.

The Contractor shall comply, where applicable, with Davis Bacon Act, Pub. L. 71-798, 46 Stat. 1494. Compliance with this Act is only required for Task Orders funded by Qualified Energy Conservation Bonds, and the applicable wage determination will be attached to said Task Orders.

No additional compensation will be allowed the Contractor because of any delays or additional costs to the Contractor, or any subcontractor of the Contractor, in any way arising from or caused by appealing any decision of the Water Reclamation District or any hearing in Court, or for any other delays or costs, any of which may have been occasioned by compliance on the part of the MWRD, the Contractor or any subcontractor of the Contractor, with the provisions of Acts, Laws, or Statutes.

Federal Regulations

Article 6. For grant funded projects, all Federal regulations including labor standards, Copeland "Anti-Kickback" Act (18U.S.C.874), equal employment opportunity and access to work shall be in effect. These regulations appear in Appendix B in the contract documents and form a part thereof. In the event of a conflict between these Federal regulations and any other requirements in the Contract Documents, the Federal regulation shall apply, and the Contractor shall abide by their provisions.

In the event that a grant funded contract exceeds Ten Thousand Dollars (\$10,000.00), then all the terms and conditions of the Affirmative Action Requirements shall be in effect. These requirements are included in the Contract Documents as APPENDIX C and form a part thereof.

Night, Saturday, Sunday and Holiday Work

Article 10. Whenever the Contractor shall be permitted or directed to perform work at night, or on Saturdays, Sundays or a holiday, or to vary the period of hours during which any work is carried on each day, he shall give at least 24 hours written notice to the Engineer so that proper inspection may be provided. Such work shall be done under regulations to be furnished in writing by the Engineer, and no extra compensation shall be allowed therefore, unless expressly provided for in the Detail Specifications.

Precautions

Article 11. The Contractor shall take any precautions that may be necessary to render any portion of the work secure in every respect or to decrease the probability of accidents from any cause, or to avoid contingencies which are liable to delay the completion of the work. The Contractor shall furnish and install, subject to the approval of the Engineer, all necessary facilities to provide safe means of access to all points where work is being performed hereunder and make all necessary provisions to insure the safety of all persons during the performance of said work. The Contractor will be required to conduct his work so as not to obstruct or render dangerous public highways, bridges, railroads and navigable waterways.

Superintendence

Article 12. The Contractor shall at all times have a competent foreman, superintendent or other representative on the work who shall have full authority to act for the Contractor and to receive and execute orders from the Engineer, who shall receive shipments of material to the Contractor, and who shall see that the work is executed in accordance with the specifications and plans and the orders of the Engineer hereunder.

Personnel

Article 13. Employees of any Contractor or subcontractor performing work on any of the premises of any of the facilities of the MWRD shall, at all times while so engaged, wear attached to their outer garment, so as to be promptly distinguishable, a colored button or badge bearing the name of the Contractor or subcontractor and the number assigned by the employer to each such employee.

Before starting work on any project on the premises of the MWRD, the employer shall furnish to the Engineer of the MWRD a list of the employees to be engaged on such work, with their respective assigned number. The color and size of said button or badge shall be approved by the Engineer.

The Contractor will actively co-operate with the District's Police in security efforts as the Department of Homeland Security's threat level may indicate. As a minimum the Contractor will provide the District Police office with copies of all employee's and subcontractor's employee's drivers licenses.

Sanitation

Article 14. The Contractor shall enforce among his employees such regulations in regard to cleanliness and the disposal of garbage and wastes as shall be conducive to their health, and tend to prevent the inception and spread of contagious and infectious disease among them, and shall provide an ample supply of suitable pure drinking water, and shall take such means as the Engineer may direct to effectively prevent the creation of a nuisance on any part of the site or adjacent streets or property. Necessary sanitary conveniences for the use of the laborers on the work, properly secluded from public observation, shall be constructed and maintained by the Contractor in such manner and at such points as shall be approved, and their use shall be strictly enforced.

Patents

Article 15. Contractor hereby agrees to defend, at his own expense, the MWRD, and indemnify and hold and save it harmless in any suit or action brought against the MWRD for alleged infringement of any patents relating to any material, machinery, devices, equipment, apparatus, or processes furnished, used or installed by said Contractor, and the Contractor shall pay any and all expenses including attorneys' fees, costs, damages, judgments or awards, and satisfy any and all liabilities which may arise against said MWRD on account thereof.

The MWRD shall promptly notify the Contractor in writing of the filing of any such suit or action and give such needed information and assistance as may be within its control.

The Contractor agrees that in the event he shall fail or refuse to so defend the MWRD as herein provided, the MWRD may do so and collect from the Contractor any and all attorneys' fees, costs and other expenses, including any judgments and awards, and in such case the

MWRD shall have the right to retain, from any sums of money due or to become due to the Contractor, sufficient funds to so reimburse it.

If the Contractor utilized any material, machinery, device, equipment, apparatus or process covered by a patent, MWRD has the discretion to make a request of the ESCO or its Subcontractor to produce written proof of a valid, current license under the patent at any time, if such a license is required for use.

It is understood that the obligations imposed on said Contractor by this Article 15 shall not apply to claims for infringements of patents on the processes of treatment of sewage and sludge generally used in the project for which the work under this Contract is a part.

Cooperation

Article 21. It is understood and agreed that all work shall be executed in such manner and in such order as will permit the commencement and carrying on of work of the MWRD and of other contractors engaged in work on the same site, which may be prosecuted at the same time, with the least interference possible under a reasonable procedure whenever it is necessary or desirable to prosecute said work, either simultaneously with the work under this Contract or otherwise. To this end the Contractor shall cooperate with and assist the MWRD and other contractors engaged in work on the same site in every reasonable way and shall interfere as little as possible with their work. The Contractor shall so arrange his work, plant (stationary construction equipment directly used in the prosecution of the Work) and equipment that work of the MWRD and of other contractors for the MWRD shall be kept accessible at any time and can be performed without unnecessary or unreasonable expense on account of the work, plant or equipment of the Contractor hereunder. The Contractor shall move, free of charge, his plant and equipment or any part of the same whenever the Engineer shall consider it reasonable and necessary for the work of the MWRD or other contractors. The Contractor, when requested by the Engineer, shall also furnish the MWRD and other contractors with material and with the use of plant and equipment of the Contractor at reasonable rates therefore, whenever, in the opinion of the Engineer, such use of such plant and equipment will not unreasonably delay or interfere with the work under this Contract.

The Contractor shall not be entitled to any damages or anticipated profits on work deleted or extra compensation from the MWRD on account of any work performed by the MWRD, or other contractors, that is contemplated in the specifications or on the plans or that is necessary for carrying on or completing or that in any way affects the work under this Contract, provided that such work of the MWRD and other contractors, in the opinion of the Engineer, is performed in a proper and expeditious, or a necessary manner. The Engineer shall decide all questions between the Contractor and the MWRD or other contractors, and the order of carrying on the work shall always be subject to the Engineer's direction and approval.

Financial Interest Provisions

Article 37. The provisions of the Purchasing Act, 70 ILCS 2605/11.1-11.24 are applicable to this Contract.

The Contractor's attention is specifically directed to Section 11.18 thereof, which provision, in part, states:

***No officer or employee of a sanitary district organized pursuant to this Act shall be financially interested, directly or indirectly, in any bid, purchase order, lease or contract to which

such sanitary district is a party. For purposes of the Section, an officer or employee of the sanitary district is deemed to have a direct financial interest in a bid, purchase order, lease or contract with the district if the officer or employee is employed by the district and is simultaneously employed by a person or corporation that is a party to any bid, purchase order, lease or contract with the sanitary district.

Any officer or employee convicted of a violation of this section shall forfeit his office or employment and in addition shall be guilty of a Class 4 felony.**"

The Contractor shall comply with each and every section of said Act which may be applicable to this Contract.

The provisions of said Act shall be included in, and be applicable to any subcontract made by the Contractor.

The Contractor will also comply with the MWRD's ethic's ordinance (MWRDGC Ord. 04-001, April 22, 2004) in all dealings with all District employees. The Contractor is responsible for insuring that all subcontractors receive copies of this ordinance with their subcontract and shall insure the compliance of subcontractors, at all levels on the project, with the ordinance.

Ownership

Article 38. It is understood and agreed by and between the parties hereto, that it is the intention of the parties hereto that the MWRD shall acquire exclusive ownership of the materials and work which have entered or are fabricated to enter into the material or equipment covered by this Contract upon the payment by the MWRD for any sum or sums of money specified in this Contract to be paid on itemized progress certificates, and the Contractor hereby agrees that he will, when such payments are made, execute and deliver, on demand, to the MWRD, a bill or bills of sale of the material or equipment or parts of equipment included on such certificate, whether in an uncompleted or fully completed condition, as evidence of such ownership.

The Contractor hereby further agrees to segregate the work intended for the MWRD from all other work and attach to the material or equipment appropriate signs, marks or evidence to the effect that the material or equipment, whether uncompleted or completed, is the exclusive property of the MWRD.

It is further understood and agreed, by and between the parties hereto, that the payment by the MWRD of any sum or sums of money herein specified to be paid on progress certificates and the acquired ownership of the material or equipment or parts thereof shall not operate as a bar to subsequent inspection and rejection of all or any portion of such materials and workmanship as may be unacceptable under the terms of this Contract in the judgment of the Engineer, and further, that such payments and acquired ownership shall not in any respect constitute a waiver or modification of any of the terms and provisions of this Contract and particularly shall not affect the provisions hereof in regard to time for delays.

Special Provisions Safety Paragraphs For Use With M&O Contracts

1. The Contractor shall be responsible for the safety of the Contractor's employees, Water Reclamation District personnel, and all other personnel at the site of the work and:
 - 1a. Have a competent Safety Representative(s) with at least OSHA level ten (10) training available and readily accessible at all times while work is in progress.
 - 1b. The competent Safety Representative(s) must be on the job site at all times while work is in progress. Where multiple sites are involved, he must have an approved alternate at each site at all times where work is in progress. ESCO may designate a journeyman or foreman, including a journey or foreman working for a subcontractor, as the Safety Representative(s).
 - 1c. He shall be provided with an appropriate office, on the job site where most of the work is to be performed, and maintain and keep available safety records and up to-date copies of pertinent safety rules and regulations. This requirement can be satisfied by the use of a staging area—a trailer is not required.
2. A resume of the qualifications of the Safety Representative(s) must be submitted to the District and approved by the Engineer prior to the start of any field work. This resume shall include such items as education, special safety and first aid courses completed, and safety conferences attended. ESCO may designate a journeyman or foreman, including a journey or foreman working for a subcontractor, as the Safety Representative(s).
3. The Safety Representative shall:
 - 3a. Have successfully completed and be currently certified in the American Red Cross CPR, American Red Cross First Aid, and the OSHA Construction Safety and Health Course (level 10) or approved equals. NOTE: Where construction is not the main focus of the Contract, ie. Sludge Hauling Contracts, the OSHA Construction Safety Course requirement is vacated.
 - 3b. Be completely familiar with all applicable health and safety requirements of all governing legislation and ensure compliance with same.
 - 3c. Ensure that safety meetings and safety training programs are scheduled and conducted as required by law.
 - 3d. Post all appropriate notices regarding safety and health regulations at locations which afford maximum exposure to all personnel at the job site.
 - 3e. Post the name, address, and hours of the nearest medical doctor, name and address of nearby clinics and hospitals, and the telephone numbers of the fire and police departments.
 - 3f. Post appropriate instructions and warning signs in regard to all hazardous areas or conditions.
 - 3g. Have proper safety and rescue equipment as required for the type of work performed. This equipment shall include such applicable items as proper fire extinguishers, flare kits, first aid kits, safety ropes and harnesses, stretchers, life preservers, oxygen

breathing apparatus, resuscitators, gas detectors, oxygen deficiency indicators, explosimeters, etc. The equipment shall be adequately maintained and readily available for any contingency.

- 3h. Make inspections at least once daily to ensure that all machines, tools, and equipment are in a safe operating condition; that all work methods are not dangerous; and that all work areas are free of hazards and submit to the Engineer each day a copy of his findings on an inspection checklist report form.
- 3i. Also submit to the Engineer copies of all safety records along with all safety inspection reports and certifications from regulating agencies and insurance companies.
4. The Contractor shall report to the Engineer all accidents involving injury to personnel or damage to equipment and structures. In addition, the Contractor shall furnish to the Engineer a copy of all accident or health hazard reports prepared for OSHA as well as copies of all notices of apparent violations that may be issued by OSHA and all disposition reports on any hearings, appeals, findings, etc.
5. The Engineer shall be permitted to examine all reports, recommendations, and records of the Safety Representative, and upon request shall be given copies of any such reports, recommendations, and records.
6. All personnel employed by the Contractor or his Subcontractors whenever entering the job site, any shaft, or tunnel headings, shall be required to wear approved safety hats.
7. The Contractor shall comply with all noise requirements relating to noise levels as specified in OSHA.
8. When the work is located on or close to roadways, the Contractor shall provide all necessary traffic control for protection of the traveling public.
9. The Contractor shall comply with the provisions of "State of Illinois Manual of Uniform Traffic Control Devices" or other pertinent governing regulations for traffic control.
10. Where work is in tunnels, sewers, pipes, underground structures, etc., or for excavations more than 4 feet in depth, the Contractor shall also provide the following safety equipment, all subject to the approval of the Engineer:
 - 10a. Adequate stretcher units placed in convenient locations adjacent to the work;
 - 10b. Oxygen deficiency indicators;
 - 10c. Carbon monoxide testers;
 - 10d. Hydrogen Sulfide detectors;
 - 10e. Portable explosimeter for the detection of explosive gases such as methane, petroleum vapors, etc.
 - 10f. An adequate number of U.S. Bureau of Mines' approved self rescuers in all areas where employees might be trapped by smoke or gas.

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE
ACTION TO ENSURE EQUAL EMPLOYMENT
OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS AND TIMETABLES

<u>Time</u> <u>Table</u>	<u>Trade</u>	<u>Fulton</u> <u>County</u> <u>Goal</u> <u>(Percent)</u>	<u>Cook</u> <u>County</u> <u>Goal</u> <u>(Percent)</u>
Until further notice	Asbestos Workers	3.3	19.6
	Bricklayers	3.3	19.6
	Carpenters	3.3	19.6
	Electricians	3.3	19.6
	Elevator installers	3.3	19.6
	Glaziers	3.3	19.6
	Ironworkers	3.3	19.6
	Metal lathers	3.3	19.6
	Painters	3.3	19.6
	Plumbers	3.3	19.6
	Pipe fitters	3.3	19.6
	Plasterers	3.3	19.6
	Roofers	3.3	19.6
	Sheetmetal workers	3.3	19.6
	Sprinkler fitters	3.3	19.6
	Operating engineers	3.3	19.6

APPENDIX A

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of \$10,000.00. The goals are applicable to the Contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

AREA COVERED

Goals for Women apply nationwide.

GOALS AND TIMETABLES

<u>Timetable</u>	<u>Goals (percent)</u>
From April 1, 1980 until further notice	6.9

APPENDIX B

Until further notice, the following goals and timetables for minority utilization shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of \$10,000.00 to be performed in the respective covered areas. The goals are applicable to the Contractor's aggregate on-site construction work-force whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

CHICAGO, ILLINOIS, AREA

Area covered -- Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000.00

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at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor, estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the Chicago, Illinois area including Cook, DuPage, Kane, Lake, McHenry, and Will Counties or Fulton County.

**STANDARD FEDERAL EQUAL
EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT
SPECIFICATIONS
(Executive Order 11246)**

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in

each subcontract in excess of \$10,000.00 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 42 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11245, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment

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opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equals employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction projects. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority persons or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/ or participate in training programs for the area which expressly include minorities and women, including

upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations;; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc.. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women

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and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on

behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties or violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.5.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade,

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union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a

limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. For those Contracts containing Special Apprenticeship Provisions, as specified in the Agreement Section of the Contract, the attached "Declaration of Policy" and "Special Provisions for Apprenticeships" shall become a part of this Appendix C.

**Exhibit E: Project Participation Guidelines: Affirmative Action Ordinance Revised
Appendix D of the Metropolitan Water Reclamation District of Greater Chicago**

AFFIRMATIVE ACTION ORDINANCE
REVISED APPENDIX D
OF THE
METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO

AS REVISED
JUNE 4, 2015

**AFFIRMATIVE ACTION ORDINANCE
REVISED APPENDIX D
OF THE
METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO**

Section 1. Declaration of Policy

Whereas, it is the policy of the Metropolitan Water Reclamation District of Greater Chicago (the "District") to ensure competitive business opportunities for small, minority- and women-owned business enterprises in the award and performance of District contracts, to prohibit discrimination on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation, veteran or military discharge status, association with anyone with these characteristics, or any other legally protected characteristic in the award of or participation in District contracts, and to abolish barriers to full participation in District contracts by all person, regardless of race, ethnicity or sex;

Whereas, the District pursuant to its authority under 70 ILCS 2605/11.3, is committed to establishing procedures to implement this policy as well as state and federal regulations to assure the utilization of minority-owned, women-owned and small business enterprises in a manner consistent with constitutional requirements;

Whereas, the District is committed to equal opportunity for minority-, women-owned and small businesses to participate in the award and performance of District contracts;

Whereas, the Supreme Court of the United States in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), has enunciated certain standards that are necessary to maintain effective contracting affirmative action programs in compliance with constitutional requirements;

Whereas, the District is committed to implementing its affirmative action program in conformance with the United States Supreme Court's decision in *Croson* and its progeny;

Whereas, in furtherance of this commitment, the Board of Commissioners directed the District staff and its outside consultants in 1990 to conduct an investigation into the scope of any discrimination in the award of and participation in District construction contracts as well as in the construction industry in Metropolitan Chicago, the extent to which such discrimination or the effects thereof has denied and continues to deny minority and women's business enterprises equal opportunity to participate in District contracts and to recommend the appropriate affirmative action steps to be taken to eliminate any such discrimination and its continuing effects.

Whereas, on June 21, 2001, the District adopted its Revised Appendix D, Notice of Requirements for Affirmative Action Program to Ensure Minority, Small and Women's Business Participation ("Appendix D"); and

Whereas, in 2006 the Board of Commissioners undertook a review of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority and women-owned businesses in the Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and

any necessary revisions thereto; Whereas, the Board of Commissioners undertook a review in 2012 of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority- and women-owned businesses in the Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and any necessary revisions thereto;

Whereas, in 2014, the Board of Commissioners undertook another review of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority- and women-owned businesses in the District's geographic and procurement market areas to evaluate the continued need for Appendix D and any necessary revisions thereto. That review resulted in commissioning a comprehensive disparity study conducted by an outside consultant that was finalized in 2015.

Section 2. Findings

The Board of Commissioners, having reviewed the 2015 report of its outside consultant finds:

1. In 2003, the U.S. District Court in *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725 (N.D. Ill. 2003) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBEs and WBEs.
2. In 2004, a study of the Metropolitan Chicago Construction Industry by Timothy Bates, Distinguished Professor, Wayne State University, concluded that the evidence that African-American, Hispanic and women-owned businesses have been, and continue to be disadvantaged in the construction industry and small businesses is strong, has remained consistent and that compelling evidence indicates that African-American, Hispanic, and women-owned businesses face barriers in the Metropolitan Chicago construction industry greater than those faced by white males.
3. A November, 2005 study of the Metropolitan Chicago construction industry by David Blanchflower, Professor of Economics at Dartmouth College, has determined that discrimination against Asian-owned businesses existed in the business community in areas of business financing and construction wages and that this, together with evidence of individual discrimination against Asian-owned construction companies, leads to the conclusion that discrimination against Asian owned businesses continues to exist in the Metropolitan Chicago construction industry.
4. In 2005, the U.S. District Court held in *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005) that there is strong evidence of the effects of past and current discrimination against MBEs and WBEs in the construction industry in the Chicago area.
5. The trial court's decision was affirmed in *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007).
6. In 2006, Board of Commissioners of Cook County, Illinois accepted a report it had commissioned titled, "Review of Compelling Evidence of Discrimination Against Minority- and Women-Owned Business Enterprise in the Chicago Area Construction Industry and Recommendations for Narrowly Tailored Remedies for Cook County, Illinois" (Cook County

2006 Report), which concluded that there is extensive evidence of discrimination against MBEs and WBEs in the Chicago area construction marketplace, and the participation of MBEs and WBEs in the County's construction prime contracts and subcontracts is below the availability of such firms.

7. In 2006, the Illinois State Toll Highway Authority commissioned a study for the availability of Disadvantaged Business Enterprises ("DBEs") in its geographic and procurement markets, to ensure that its DBE program was narrowly tailored as required by constitutional standard, which found 19.56% DBE availability in construction, 19.36% DBE availability in construction-related professional services, and that DBE utilization had steadily increased from 2.40% in 2004 to 24.72% in 2010.8. The Board of Commissioners of Cook County commissioned a new report, entitled "The Status of Minority and Women-Owned Business Enterprises Relevant to Construction Activity In and Around Cook County, Illinois" (Cook County 2010 Study), which found that MBEs and WBEs were not utilized in all aspects in proportion to their availability.

9. In 2010 the U.S. Department of Justice produced a report to Congress, entitled "Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers to Minority- and Women-Owned Businesses," that updated the original basis for the U.S. Department of Transportation's DBE program and concluded that discriminatory barriers continue to impede the ability of MBEs and WBEs to compete with other firms on a fair and equal footing in government contracting markets, including in the construction industry.

10. In 2012, the District commissioned a report on barriers to construction opportunities in the Chicago area market and recommendations for District efforts to reduce such barriers, which found continuing disparities in the Chicago area construction market.

11. In 2014, The District commissioned its first comprehensive disparity study to investigate barriers to equal opportunities in the District's geographic and industry market areas and make recommendations for District efforts to reduce such barriers, which found continuing disparities in the District's market areas.

12. In 2015, the trial court in *Midwest Fence, Corp. v. U.S. Department of Transportation et al*, 2015 WL 139676 (N.D. Ill. March 24, 2015)(Held that discrimination continues to impede full and fair opportunities for disadvantaged business enterprise in the Illinois construction industry).

13. The District has determined that it has a continuing compelling interest in preventing public funds in construction contracts from perpetuating the effects of past discrimination and current discrimination against minority- and women-owned firms in its market.

14. The Affirmative Action Program adopted by the District is hereby modified to further continue to ameliorate the effects of racial and gender discrimination in the construction market.

15. The remedies adopted herein by the District will not overly burden non-MBE and non-WBE firms in the award of District Contracts.

16. The Commissioners shall periodically review minority-owned and women-owned participation in contracts awarded by the District to ensure that the District continues to have a

compelling interest in remedying discrimination against minority and women-owned firms in the award of District contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.

Now, therefore, the District Board of Commissioners hereby adopts this Revised Appendix D:

Section 3. Purpose and Intent

The purpose and intent of this Ordinance is to mitigate the present effects of discrimination on the basis of race, ethnicity or sex in opportunities to participate on the District's prime contracts and associated subcontracts and to achieve equitable utilization of minority-owned, women-owned and small business enterprises in District construction contracts.

Section 4. Coverage

The following provisions, to be known as "Appendix D" together with relevant forms, shall apply and be appended to every construction contract awarded by the District where the estimated total expenditure is in excess of \$100,000.00, except contracts let in the event of an emergency pursuant to 70 ILCS 2605/11.5.

Section 5. Definitions

The meaning of these terms in this Ordinance are as follows:

- (a) "Administrator" means the District's Affirmative Action Program Administrator.
- (b) "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the District shall consider all appropriate factors, including common ownership, common management, and contractual relationships.
- (c) "Annual Participation Goals" mean the targeted levels established by the District for the annual aggregate participation of MBEs and WBEs in District construction contracts
- (d) "Bidder" means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not for profit corporation, a limited liability company or any other entity which has submitted a bid on a District contract.
- (e) "Books and Records" include, but are not limited to, payroll records, bank statements, bank reconciliations, accounts payable documents, account receivable documents, ledgers, all financial software, and all employer business tax returns.
- (f) "Contract Specific Goals" means the Goals established for a particular project or contract based upon the availability of MBEs or WBEs in the scope(s) of work of the Project.
- (g) "Construction contract" means any District contract or amendment thereto, providing for a total expenditure in excess of One Hundred Thousand Dollars (\$100,000.00) for the construction, demolition, replacement, major repair or renovation and maintenance of real property and improvement thereon or sludge hauling and any other related contract which the District deems appropriate to be subject to Appendix D consistent with the Ordinance.

(h) "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities.

(i) "Contract Goals" means the numerical percentage goals for MBE, WBE or SBE participation to be applied to an eligible District construction contract subject to Appendix D for the participation of MBEs, WBEs and SBEs, based upon the scopes of work of the contract, the availability of MBEs, WBEs and SBEs to meet the goals, and the District's progress towards meeting its Annual MBE, WBE and SBE goals.

(j) "Director" means the District's Director of Procurement and Materials Management, formerly known as the Purchasing Agent.

(k) "Economically Disadvantaged" means an individual with a Personal Net Worth less than \$2,000,000.00, indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2008.

(l) "Executive Director" means the chief administrative officer of the District, formerly known as the General Superintendent.

(m) "Expertise" means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required.

(n) "Good Faith Efforts" means those honest, fair and commercially reasonable actions undertaken by a contractor to meet the MBE or WBE goal, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's goals.

(o) "Hearing Officer" is an attorney licensed to practice in the State of Illinois, appointed by the Board of Commissioners, to conduct hearings as provided in this Ordinance regarding a contractor's compliance or non-compliance with this Ordinance.

(p) "Joint Venture" means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for profit business enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill and knowledge, and in which the certified firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.

(q) "Job Order Contract" or "JOC" means a firm, fixed price, indefinite quantity contract designed to complete a large number of construction projects quickly.

(r) "Local business" means a business located within the counties of Cook, DuPage, Kane Lake, McHenry or Will in the State of Illinois or Lake County in the State of Indiana which has the majority of its regular full-time work force located in this region or a business which has been placed on the District's vendor list or has bid on or sought District construction work.

(s) "Minority-owned business enterprise" or "MBE" means a Local Small business entity, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity, which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held

corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more members of one or more minority groups, and whose management, policies, major decisions and daily business operations are controlled by one or more Minority Individuals.

(t) "Minority Individual" means a natural person who is a citizen of the United States or lawful permanent resident of the United States and one of the following:

(i) African-American - A person having origins in any of the Black racial groups of Africa and is regarded as such by the African American Community of which the person claims to be a part.

(iii) Asian-American - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands or the Northern Marianas, and is regarded as such by the Asian American community of which the person claims to be a part.

(ii) Hispanic-American - A person having origins from Mexico, Puerto Rico, Cuba and South or Central America and is regarded as such by the Hispanic community of which the person claims to be a part, regardless of race.

(iv) Native-American - A person having origins in any of the original peoples of North America and who is recognized through tribal certification as a Native American by either a tribe or a tribal organization recognized by the Government of the United States of America.

(v) Individual members of other groups whose participation is required under state or federal regulations or by court order.

(vi) Individual members of other groups found by the District to be Socially Disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the District's marketplace or to do business with the District.

(u) "Personal Net Worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE, provided that the other firm is certified by a governmental agency that meets the District's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with his or her spouse or recognized civil partner, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

(v) "Prime Contractor" means a Contractor that is awarded a District contract and is at risk for the completion of an entire District project, including purchasing all materials, hiring and paying subcontractors, and coordinating all the work.

(w) "Small Business Enterprise" or "SBE" means a small business as defined by the U.S. Small Business Administration (SBA), pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the firm seeks to perform on District contracts, except that the size standard for specialty trade construction firms shall be 150 percent of the SBA size standard. A firm is not an eligible SBE in any calendar fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 CFR Part 121.

(x) "Socially Disadvantaged" means a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

(y) "Subcontractor" means a party that enters into a subcontract agreement with a District Prime Contractor to perform work or provide materials on a District project.

(z) "Tier" refers to the relationship of a subcontractor to the prime contractor. A subcontractor having a contract with the prime contractor, including a material supplier to the prime contractor, is considered a "first-tier subcontractor," while a subcontractor's subcontractor is a "second-tier subcontractor" and the subcontractor's material supplier is a "third-tier subcontractor." The subcontractor is subject to the same duties, obligations and sanctions as the contractor under this Ordinance.

(aa) "Utilization Plan" means the plan, in the form specified by the District, which must be submitted by a Bidder listing the MBEs, WBEs and SBE that the Bidder intends to use in the performance of a contract, the scopes of the work and the dollar values or the percentages of the work to be performed.

(bb) "Vendor list" means the District's list of firms that are certified as minority-owned or women-owned by the City of Chicago, the County of Cook, the State of Illinois, the Women's Business Development Center, or the Chicago Minority Supplier Development Council, or as a Disadvantaged Business Enterprise by the Illinois Unified Certification Program, or as a Small Disadvantaged Business by the U.S. Small Business Administration.

(cc) "Women-owned business enterprise" or "WBE" means a Local and Small business entity which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. Determination of whether a business is at least fifty-one percent (51%) owned by a woman or women shall be made without regard to community property laws.

Section 6. Non-Discrimination and Affirmative Action Clause

As a precondition to selection, a Contractor must include in its bid proposal for a covered contract the following commitments:

During the performance of this contract, the Contractor agrees:

(a) It shall not discriminate on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation, veteran or military discharge status, association with anyone with these characteristics, or any other legally protected characteristic in the solicitation for or purchase of goods in the performance of this contract.

(b) It shall actively solicit bids for the purchase or subcontracting of goods or services from qualified MBEs, WBEs and SBEs.

(c) It shall undertake Good Faith Efforts in accordance with the criteria established in this Ordinance, to ensure that qualified MBEs, WBE, and SBEs are utilized in the performance of this contract and share in the total dollar value of the contract in accordance with each of the applicable utilization goals established by the District for the participation of qualified MBEs, WBEs and SBEs.

(d) It shall require its subcontractors to make similar good faith efforts to utilize qualified MBEs, WBEs and SBEs.

(e) It shall maintain records and furnish the District all information and reports required by the District for monitoring its compliance with this Ordinance.

(f) It shall designate a person to act as an Affirmative Action Coordinator to facilitate the review of all concerns related to the participation MBEs, WBEs and SBEs.

Section 7. Race- and Gender- Neutral Measures to Ensure Equal Opportunities for All Contractors and Subcontractors

The District shall develop and use measures to facilitate the participation of all firms in District construction contracting activities. These measures shall include, but are not limited to:

(a) Unbundling contracts to facilitate the participation of MBEs, WBEs and SBEs as Prime Contractors.

(b) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules to facilitate the participation of interested contractors and subcontractors.

(c) Providing timely information on contracting procedures, bid preparation and specific contracting opportunities, including through an electronic system and social media.

(d) Assisting MBEs, WBEs and SBEs with training seminars on the technical aspects of preparing a bid for a District contract.

(e) Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing, and support for business development such as accounting, bid estimation, safety requirements, quality control.

(f) Prohibiting Prime Contractors from requiring bonding for subcontractors, where appropriate.

(g) Holding pre-bid conferences, where appropriate, to explain the contract and to encourage Bidders to use all available firms as subcontractors.

(h) Adopting prompt payment procedures, including, requiring by contract that Prime Contractors promptly pay subcontractors and investigating complaints or charges of excessive delay in payments.

(i) Developing Linked Deposit and other financing and bonding assistance programs to assist small firms.

(j) Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the District.

(k) Collecting information from Prime Contractors on District construction contracts detailing the bids received from all subcontractors for District on construction contracts and the expenditures to subcontractors utilized by Prime Contractors on District construction contracts.

(l) Limiting the self-performance of prime contractors, where appropriate.

(m) To the extent practicable, developing future policies to award contracts to SBEs.

(n) Maintaining information on all firms bidding on District prime contracts and subcontracts.

(o) At the discretion of the Board of Commissioners, awarding a representative sample of District construction contracts without goals, to determine MBE, WBE and SBE utilization in the absence of goals.

(p) Referring complaints of discrimination against MBEs, WBEs or SBEs to the appropriate authority for investigation and resolution.

Section 8. Certification Eligibility

(a) Only businesses that meet the criteria for certification as a MBE, WBE or SBE may be eligible for credit towards meeting Utilization Contract Goals. The applicant has the burden of production and persuasion by a preponderance of the evidence at all stages of the certification process.

(b) Only a firm owned by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

(i) The firm's ownership by a Socially and Economically Disadvantaged person(s) must be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.

(ii) The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner(s) to acquire the ownership interest must be real and substantial. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the firm's records. The individual whose Expertise is relied upon must have a commensurate financial investment in the firm.

(c) Only a firm that is managed and controlled by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

(i) A firm must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged person, from making any business decision of the firm, including the making of obligations or the dispersing of funds.

(ii) The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on management, policy, operations and work.

(iii) The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially and Economically Disadvantaged owner(s) must actually exercise control over the firm's operations, work, management and policy.

(iv) The Socially and Economically Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the firm's operations and work. The Socially and Economically Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by

other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.

(v) If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially and Economically Disadvantaged owner(s) must possess the required license or credential. If state law, District ordinance or other law regulations or statute does not require that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner(s) actually controls the firm.

(vi) A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day to day activities.

(d) Only an independent firm may be certified as a MBE, WBE or SBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent business, the Director will:

(i) Evaluate relationships with non-certified firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(ii) Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner(s) of the applicant for MBE or WBE certification or any owners of the applicant for SBE certification and non-certified firms or persons associated with non-certified firms compromise the applicant's independence.

(iii) Examine the applicant's relationships with non-certified firms to determine whether a pattern of exclusive or primary dealings with non-certified firm compromises the applicant's independence.

(iv) Consider the consistency of relationships between the applicant and non-certified firms with normal industry practice.

(e) An applicant shall be certified only for specific types of work in which the Socially and Economically Disadvantaged owner(s) for MBEs and WBEs or the majority owner for SBEs has the ability and Expertise to manage and control the firm's operations and work.

(f) The District shall certify the eligibility of Joint Ventures involving MBEs, WBEs or SBEs and non-certified firms.

(g) The certification status of all MBEs, WBEs and SBEs shall be reviewed periodically by the Administrator. Failure of the firm to seek recertification by filing the necessary documentation with the Administrator as provided by rule may result in decertification.

(h) It is the responsibility of the certified firm to notify the Administrator of any change in its circumstances affecting its continued eligibility. Failure to do so may result in the firm's decertification.

(i) The Administrator shall decertify a firm that does not continuously meet the eligibility criteria.

(j) Decertification by another agency shall create a *prima facie* case for decertification by the District. The challenged firm shall have the burden of proving by a preponderance of the evidence that its District certification should be maintained.

(k) A firm that has been denied certification or recertification or has been decertified may protest the denial or decertification by filing a written appeal with the Executive Director within

10 calendar days of receipt of the denial of District certification, recertification or decertification. The appeal should set forth in detail the facts upon which it is based, and attach all relevant documentations. The Executive Director shall render a decision within 15 calendar days of receipt of a timely appeal. The Executive Director's decision shall be final.

(l) A firm found to be ineligible may not apply for certification for two years after the effective date of the final decision.

Section 9. Schedule of Goals for Minority-Owned, Women-Owned and Small Business Enterprise Utilization

In fulfillment of its policy to provide MBEs, WBEs, and SBEs full and equitable opportunities to participate in the District's construction prime contracts and subcontracts, the District shall establish annually goals for MBE, WBE and SBE participation, based on the availability of MBEs and WBEs in the District's geographic and procurement market.

Section 10. Contract Goals.

(a) The Director, in consultation with the Administrator and the User Department, shall establish Contract Goals for construction contracts based upon the availability of at least three MBEs and three WBEs registered on the District's vendor list to perform the anticipated subcontracting functions of the contract and the District's utilization of MBEs and WBEs to date.

(b) Where a substantial portion of the total construction contract cost is for the purchase of equipment, the Director may designate goals for only that portion of the contract relating to construction work and related supplies and/or modify the limitations on the credit for MBE or WBE suppliers herein.

(c) The Contract Goal(s) shall be designated in the contract documents.

Section 11. Counting MBE, WBE, and SBE Participation towards Contract Goals

(a) A Bidder may achieve the Utilization Contract Goals by its status as a MBE, WBE or SBE or by entering into a Joint Venture with one or more MBEs, WBEs and SBEs or by first-tier subcontracting a portion of the work to one or more MBEs, WBEs and SBEs or by direct purchase of materials or services from one or more MBEs, WBEs and SBEs or by any combination of the above.

(b) If a firm is certified as both a MBE and a WBE, the Bidder may count the firm's participation either toward the achievement of its MBE or WBE goal, but not both.

(c) A Bidder may count toward the achievement of its SBE goal the utilization of any MBE or WBE that also satisfies the definition of a SBE.

(d) A Bidder may count the entire amount of that portion of a contract that is performed by MBEs, WBEs or SBEs own forces, including the cost of supplies and materials obtained and installed by the MBE, WBE or SBE for the work of the contract, and supplies purchased or equipment leased by the MBE, WBE or SBE used to directly perform the work of the contract (except supplies and equipment the MBE, WBE or SBE purchases or leases from the Prime Contractor or the Prime Contractor's Affiliate).

(e) Where a Bidder or first-tier subcontractor engages in a Joint Venture to meet the Contract Goal, the Administrator shall review the profits and losses, initial capital investment,

actual participation of the Joint Venture in the performance of the contract with its own forces and for which it is separately at risk, and other pertinent factors of the joint venture, which must be fully disclosed and documented in the Utilization Plan in the same manner as for other types of participation, to determine the degree of MBE, WBE or SBE participation that will be credited towards the Contract Goal. The Joint Venture's Utilization Plan must evidence how it will meet the goal or document the Bidder's Good Faith Efforts to do so. The Administrator has the authority to review all records pertaining to Joint Venture agreements before and after the award of a contract in order to assess compliance with this Ordinance. The MBE, WBE or SBE Joint Venture partner must have a history of proven expertise in performance of a specific area of work and will not be approved for performing only general management of the Joint Venture. The specific work activities for which the MBE, WBE or SBE Joint Venture partner will be responsible and the assigned individuals must be clearly designated in the Joint Venture Agreement. The Joint Venture must submit to the Administrator quarterly work plans, including scheduling dates of the tasks. The Administrator must approve the quarterly plans for the MBE, WBE or SBE Joint Venture partner's participation to be credited towards the Contract Goals.

(f) Only the participation of MBEs, WBEs or SBEs that will perform as first-tier subcontractors will be counted towards meeting the Utilization Contract Goals.

(g) Only expenditures to a MBE, WBE or SBE that is performing a Commercially Useful Function shall be counted towards the Utilization Contract Goal.

(i) A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The firm must pay all costs associated with personnel, materials and equipment. The firm must be formally and directly responsible for the employment, supervision and payment of its workforce must own and /or lease equipment, and must be responsible for negotiating price, determining quality and quantity and paying for and ordering materials used. The firm cannot share employees with the Prime Contractor or its Affiliates. No payments for use of equipment or materials by the firm can be made through deductions by the Prime Contractor. No family members who own related businesses are allowed to lease, loan or provide equipment, employees or materials to the firm.

(ii) A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of MBE, WBE or SBE participation. The Prime Contractor is responsible for ensuring that the firm is performing a commercially useful function.

(iii) The District will evaluate the amount of work subcontracted, industry practices, whether the amount the MBE, WBE or SBE is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

(iv) If a firm subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a firm is presumed not to be performing a Commercially Useful Function, the firm may present evidence to rebut this presumption.

(h) Credit towards the Contract Goals will be allowed only for those direct services performed or materials supplied by MBEs, WBEs or SBEs or first-tier subcontractor MBEs, WBEs or SBEs. MBEs, WBEs or SBEs must perform no less than eighty-five percent (85%) of

their work with their own forces, through the use of its own management and supervision, employees and equipment. If industry standards and practices differ, the firm must furnish supporting documentation for consideration by the District.

(i) Purchase of materials and supplies must be pre-approved if their purchase is related to goal attainment. Bidder may count payments to MBE, WBE or SBE regular dealers or manufacturers who offer only furnish and deliver contracts for materials and supplies for no more than twenty-five percent (25%) of each MBE, WBE or SBE goal, unless approved by the Administrator. If the bidder exceeds the supplier exception amount allowable as stated in the bid documents, the bid will be viewed as non-responsive.

(j) A dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Bidder.

(k) If a firm ceases to be a certified during its performance on a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted.

(l) In determining achievement of Utilization Contract Goals, the participation of a MBE, WBE or SBE shall not be counted until that amount has been paid to the MBE, WBE or SBE.

Section 12. Utilization Plan Submission

(a) Compliance documents must be submitted as provided in the solicitation. Failure to do so will render the bid non-responsive. The Director shall review each bid submission to determine if it meets the requirements herein.

(b) A Bidder must either meet the Utilization Contract Goals or establish its Good Faith Efforts to do so as described in Appendix D and the solicitation.

(c) Each Bidder shall submit with its bid a completed and signed Utilization Plan that lists the names, addresses, telephone numbers, email addresses and a description of the work with contract item number and contact person of the businesses intended to be used as subcontractors, subconsultants and suppliers, including those firms proposed to meet the Contract Goal(s); the type of work or service each business will perform; and the dollar amount to be allocated to the certified firm(s). Each Bidder's Utilization Plan shall commit to MBE, WBE or SBE participation equal to or greater than each of the Contract Goals set forth in the solicitation, unless the Bidder requests a partial or total waiver of the requirement that it file a Utilization Plan or achieve a particular goal by submitting with the bid a signed Waiver Request in the form specified in the solicitation.

(d) Each Bidder must submit with its bid a signed MBE, WBE or SBE Subcontractor's Letter of Intent for each firm in the form specified in the solicitation, with either a copy of each MBE, WBE or SBEs current Letter of Certification from a state or local government or agency

or documentation demonstrating that the firm is a MBE, WBE or SBE within the meaning of this Appendix D. In the event of a conflict between the amounts stated on the Utilization Plan and the MBE, WBE or SBE Subcontractor's Letter of Intent, the terms stated on the Utilization Plan shall control. An original or facsimile copy of the MBE, WBE or SBE Subcontractor's Letter of Intent will be acceptable.

(e) Where a Bidder had failed to meet the Contract Goal(s), it must file a Waiver Request documenting its Good Faith Efforts to meet the Goal(s) as provided in the format described in the solicitation, the Administrator shall require the contractor to file a Contractor Information Form and provide additional documentation of its good faith efforts in attempting to fulfill such goals.

(i) Such Good Faith Efforts, as defined herein, shall include, but are not limited to, the following:

(i) Attend any pre-bid conference conducted by the District to acquaint contractors with MBEs, WBEs and SBEs available to provide relevant goods and services and to inform MBEs, WBEs and SBEs of subcontract opportunities on the contract;

(ii) Review lists of available MBEs, WBEs and SBEs maintained by the District and other state and local governments and agencies prior to the bid opening to identify qualified MBEs, WBEs and SBEs for solicitation for bids;

(iii) Advertise, not less than 15 calendar days before the bid opening date, in one or more daily newspapers and/or trade publications, for proposals or bids by MBEs, WBEs and SBEs for subcontracts or the supply of goods and services on the contract;

(iv) Make timely written solicitations of available MBEs, and WBEs and SBEs identified on the District's vendor list that provide relevant services for subcontracts or the supply of goods and services;

(v) Provide MBEs, WBEs and SBEs with convenient and timely opportunities to review and obtain relevant plans, specifications or terms and conditions of the contract to enable such MBEs, WBEs and SBEs to prepare an informed response to a contractor solicitation;

(vi) Divide total contract requirements into small tasks or quantities and adjust performance bond and insurance requirements or otherwise assist MBEs, WBEs and SBEs in obtaining the required bonding, insurance or financing, where economically feasible, to encourage participation of MBEs, WBEs and SBEs;

(vii) Follow up initial solicitation of MBEs, WBEs and SBEs by contacting them to determine if the enterprises are interested in making bids or proposals;

(viii) Negotiate in good faith with MBEs, WBEs and SBEs prior to the bid opening and do not reject as unsatisfactory any bids or proposals submitted by M/WBEs without justifiable reason, including the lack of bonding capacity or the ability to obtain insurance requirements such as Completed Builders Risk (All Risk) Insurance, Comprehensive General Liability Insurance, Contractor Contractual Liability Insurance and Public Liability Insurance;

(ix) Establish delivery schedules, where the requirements of the work permit, which will encourage participation by MBEs, WBEs and SBEs;

(x) Establish joint ventures with MBEs, WBEs and SBEs;

(xi) Use the services and assistance of the District, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce and appropriate community and minority and women's business organizations;

(ii) Failure of a Bidder to provide requested information to the Administrator or to cooperate with the Administrator's investigation, may be grounds for the rejection of a bid and/or a Waiver request.

(iii) Upon completion of the investigation, the Administrator shall inform the Director of his or her findings.

(iv) The Director, after consultation with the Administrator, shall determine whether to grant the waiver request based on the Bidder's Good Faith Efforts at the time of bid submission.

(v) Where the Director determines that a Bidder has not made Good Faith Efforts, the Director shall declare the bid submission non-responsive and will reject the bid.

(d) A contractor's submission of a Utilization Plan that commits to a MBE or WBE participation equal to or greater than the applicable utilization goals shall not provide a basis for a higher bid, an increase in contract price or a later change order.

(e) The requirement to submit a Utilization Plan and MBE, WBE or SBE Subcontractor's Letters of Intent applies when the individual project is awarded under Job Order Contracts awarded by the District.

(i) A Prime Contractor issued a Job Order Contract shall submit with each work order issued under such a Contract its Utilization Plan that lists the name, address, telephone number, email address and contact person for each MBE, WBE or SBE to be used on the work order, as well as a description of work to be performed and a dollar amount to be allocated to such MBE, WBE or SBE. The Prime Contractor shall submit with each work order a MBE, WBE or SBE Subcontractor's Letter of Intent from each certified firm.

(ii) A Prime Contractor awarded a Job Order Contract shall be subject to the compliance monitoring provisions herein. The Prime Contractor must submit to the Administrator monthly documentation, as specified by the Administrator, demonstrating that the Contractor has attained the Contract Goals for the completed portion of the Job Order Contract, or that it has been unable to do so despite its good faith efforts. Good Faith Efforts must be documented as provided in this Ordinance.

Section 13. Compliance Review

(a) The Director shall declare the bid submission non-responsive if a Bidder:

(i) Failed to submit with its bid a completed and signed Utilization Plan;

(ii) Failed to commit in its Utilization Plan to MBE, WBE and SBE participation equal to or greater than each of the Utilization Contract Goals unless the Bidder submitted with its bid a request for a total or partial waiver of the Goal(s).

(iii) Failed to identify in its Utilization Plan the MBE, WBE or SBE by name, scope of work, contract item number, and dollar value of work or percentage of participation equal to or greater than each of the Contract Goal(s).

(iv) Failed to submit with its bid the MBE, WBE and SBE Subcontractor's Letter of Intent from each MBE, WBE and SBE listed on its Utilization Plan.

(b) Where, after consultation with the Administrator, the Director determines that the Utilization Plan submitted by a Bidder is false or fraudulent, the bid shall be rejected or, if the determination is made after the bid award, the contract may be forfeited in accordance with the provision of Article 28 of the General Conditions.

(c) If a Mentor-Protégé relationship is proposed to meet the Contract Goal, the Mentor-Protégé Development Plan must be submitted to the Administrator for approval prior to contract award. Mentor-Protégé relationship" describes an association between large business prime contractor firms and socially disadvantaged firms designed to motivate, encourage and to provide mutually beneficial developmental assistance to those socially disadvantaged firms.

(d) Prior to the award of any contract, the Administrator shall review the Utilization Plan, MBE, WBE and SBE Subcontractor's Letter(s) of Intent and Letter(s) of Certification, and Contractor Information and Waiver Request Forms as specified in the solicitation, submitted by the apparent low bidder on a contract and conduct any other investigation the Administrator deems appropriate to determine compliance.

(e) Within 30 calendar days after demand, the Prime Contractor shall furnish executed copies of all MBE, WBE and SBE subcontracts to the Administrator. Subsequently, the contractor shall obtain and submit a copy of all MBE, WBE and SBE related subtier contracts on demand.

(f) The Prime Contractor shall set timetables for use of its subcontractors before fifty percent (50%) of the work is completed.

(g) If requested by the Administrator, the Prime Contractor must submit a MBE, WBE and SBE Work Plan projecting the work tasks associated with certified firms' commitments prior to the award of the contract. The Work Plan must provide a description of the work to be subcontracted to other MBEs, WBEs and SBEs and non-certified firms and the dollar amount and the name of the all tiers of subcontractors. The Work Plan becomes part of the Prime Contractor's contractual commitment and the contract record, and may not be changed without prior approval of the Administrator.

Section 14. Contract Performance Compliance

(a) After the award of a contract, the Administrator shall review the Prime Contractor's compliance with its MBE, WBE and SBE commitments during the performance of the contract.

(b) The Prime Contractor shall be required to submit the Affirmative Action Monthly MBE/WBE/SBE Status Report providing the information and in the format as specified by the District with every payment request. The Contractor's failure to do so may result in a delay of the progress payment.

(c) Evidence of MBE, WBE and SBE subcontractor participation and payments must be submitted as required by the District to confirm subcontractors' participation and payment.

(d) District contract compliance officers and auditors, or their designees, shall have access to the contractor's and subcontractor's books and records, including certified payroll records, bank statements, employer business tax returns and all records including all computer records and books of account to determine the contractor and MBE, WBE and SBE subcontractor compliance with the goal commitment. Audits may be conducted at any time and without notice in the total discretion of the District. A Prime Contractor must provide the Administrator any additional compliance documentation within 14 calendar days of such request. Audits may be conducted without notice at any time at the discretion of the District.

(e) If District personnel observe that any purported MBE, WBE and SBE subcontractor other than those listed on the Utilization Plan are performing work or providing materials and/or equipment for those MBE and WBE subcontractors listed on the Utilization Plan, the Prime Contractor will be notified in writing of an apparent violation is taking place and progress payments may be withheld. The contractor will have the opportunity to meet with the Affirmative Action Administrator prior to a finding of noncompliance.

(f) Where a partial or total waiver of the Contract Goal(s) has been granted, the Prime Contractor must continue to make Good Faith Efforts during the performance of the contract to meet the Goal(s), and the Administrator shall provide technical assistance with respect to such efforts. The Administrator shall require the Prime Contractor to provide documentation of its continuing Good Faith Efforts in attempting to fulfill its commitments.

(g) The Prime Contractor cannot make any changes to the approved Utilization Plan or substitutions of the MBE(s), WBE(s) or SBE(s) listed in the Utilization Plan throughout the life of the contract without the prior, written approval of the Administrator. This includes, but is not limited to, instances in which the Prime Contractor seeks to perform work originally designated for a MBE, WBE or SBE subcontractor with its own forces or those of an affiliate, a non-certified firm or another MBE, WBE or SBE. Failure to obtain the prior, written approval of the Administrator in the format specified by the District shall constitute a breach of the contract, and subject the Prime Contractor to any and all available sanctions. The participation of certified firms that did not receive prior, written approval by the Administrator will not be counted towards the Contract Goal(s).

(i) The Prime Contractor must demonstrate good cause to terminate or reduce the scope of work of the MBE, WBE or SBE to the satisfaction of the Administrator. Good cause is limited to the following circumstances:

(1) The listed MBE, WBE, or SBE subcontractor fails or refuses to execute a written contract.

(2) The listed MBE, WBE or SBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.

(3) The listed MBE, WBE or SBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state or local law.

(4) The Administrator has determined that the listed MBE, WBE or SBE subcontractor is not a responsible contractor.

(5) The listed MBE, WBE or SBE subcontractor voluntarily withdraws from the project and provides the Administrator written notice of its withdrawal.

(6) The listed MBE, WBE or SBE subcontractor is ineligible to receive credit for the type of work required.

(7) The MBE, WBE or SBE owner dies or becomes disabled with the result that the listed MBE, WBE or SBE subcontractor is unable to complete its work on the contract.

(8) Other good cause as determined in the Administrator's sole discretion.

(ii) Good cause does not include where the Contractor seeks to terminate a MBE, WBE or SBE it relied upon to obtain the contract so that the Contractor can self-perform the work or substitute another MBE, WBE or SBE or non-certified subcontractor to perform the work for which the MBE, WBE or SBE was engaged or listed on the Utilization Plan.

(iii) The Prime Contractor must give the MBE, WBE or SBE notice in writing, with a copy to the Administrator, of its intent to request to terminate and/or substitute, and the detailed reasons for the request.

(iv) If the Prime Contractor proposes to terminate or substitute a MBE, WBE or SBE subcontractor for any reason, the Contractor must make Good Faith Efforts as defined herein to find a substitute MBE, WBE or SBE subcontractor for the original MBE, WBE or SBE to meet its MBE, WBE or SBE contractual commitment. Its Good Faith Efforts shall be directed at finding another MBE, WBE or SBE to perform or provide at least the same amount of work, material or service under the contract as the original MBE, WBE or SBE to the extent necessary to meet its MBE, WBE or SBE contractual commitment.

(v) The Prime Contractor must submit a MBE, WBE or SBE Subcontractor's Letter of Intent for each proposed new MBE, WBE or SBE subcontractor.

(vi) The Administrator will approve or disapprove the substitution based on the Prime Contractor's documented compliance with these provisions.

(h) In the event a Prime Contractor fails to achieve the level of MBE, WBE or SBE participation described in its Utilization Plan as the result of the District's deletion of the work to be performed by a MBE, WBE or SBE, the Prime Contractor shall notify the Administrator in writing and may request an amendment of its Utilization Plan. A letter of release signed by the subcontractor must be included with the request.

(i) In the event a Prime Contractor, in the performance of its contract, determines that the conditions of the work warrant a reduction in the scope of work to be performed by a MBE, WBE or SBE the Prime Contractor must utilize Good Faith Efforts to fulfill its MBE, WBE or SBE contractual commitment. The Prime Contractor must notify the Administrator in writing within 14 calendar days of the determination to request an amendment of its Utilization Plan. The Prime Contractor must give the MBE, WBE or SBE notice in writing, with a copy to the Administrator, of its intent to request to reduce the scope of work, and the detailed reasons for the request. The Administrator will approve or disapprove the reduction based on the Prime Contractor's documented compliance with these provisions.

(j) Where contract change orders are made individually or in the aggregate that increase the total value of the contract by more than ten percent (10%) of the original contract value, the

Prime Contractor shall increase the utilization of all MBEs, WBEs or SBEs, where feasible, so that the total value of the percentage of work performed by MBEs, WBEs or SBEs as to increased contract value bears the same relationship to the total value of the contract (as modified by change orders) as the percentage of MBEs, WBEs or SBEs utilization committed to in the contractor's original Utilization Plan.

Section 15. Sanctions for Non-Compliance

(a) Where the Administrator believes that the Prime Contractor or subcontractor has committed fraud or misrepresentation against the District or has failed to comply with this Ordinance or its contract, or provided false or fraudulent documentation, the Administrator shall notify the Prime Contractor and/or subcontractor in writing of such determination of noncompliance and withhold up to one hundred percent (100%) of the current progress or final payment due the Prime Contractor for up to 90 days. The amount to be withheld shall be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made Good Faith Efforts to achieve such commitments. The Prime Contractor and/or subcontractor shall have the right to meet with the Administrator within 10 calendar days of receipt of the notice. After conference and conciliation, the Administrator will determine whether the Prime Contractor and/or subcontractor is in compliance.

(b) If the Administrator determines the Prime Contractor and/or subcontractor is not in compliance and the violation cannot be resolved by conference and conciliation, the Administrator shall refer the matter to the Executive Director and the Executive Director may return the referral to the Administrator with direction or may direct the Prime Contractor and/or subcontractor to show cause on a date certain why further sanctions should not be imposed.

(i) The Prime Contractor or subcontractor shall have 15 calendar days after receipt of the show cause notice within which to file a response in writing with the Administrator. A hearing before a duly appointed Hearing Officer shall be convened to provide the contractor and/or subcontractor an opportunity to be heard with respect to the non-compliance. Within 30 calendar days after the Executive Director's referral, the Hearing Officer shall schedule a hearing to be held within 30 calendar days of receipt of the referral for hearing at which the District, the contractor and/or subcontractor may present evidence of the purported violation and/or the absence thereof. The District will carry the burden of proof by a preponderance of the evidence. The Prime Contractor and/or subcontractor may present additional evidence and witnesses to show cause why sanctions should not be imposed. An official record will be kept with the Clerk of the District. All filings by the District or the respondents should be made with the Clerk of the District, with courtesy copies going to the parties and the Hearing Officer.

(ii) The Hearing Officer shall conduct such show cause hearings involving the Ordinance and shall render findings of fact, conclusions of law and recommendations regarding disposition of the hearings. Procedures and rules governing the show cause hearings will be adopted by the Board of Commissioners. The Hearing Officer will not become co-counsel with any attorneys appearing before him/her at any time during the hearing.

(iii) All Show Cause Hearings must be conducted on the record and all testimony must be under oath and transcribed verbatim by a court reporter. All parties shall be given the opportunity to present and respond to evidence. The Hearing Officer shall conduct a fair hearing and maintain order and shall abide by the Judicial Canons of Ethics enacted by the Illinois Supreme Court.

(iv) Within 30 calendar days after the hearing with the Prime Contractor and/or subcontractor, the Hearing Officer shall issue in writing to the Executive Director his/her written findings of fact, conclusions of law as to compliance and recommendations with respect to any appropriate sanctions. The Executive Director shall transmit the Hearing Officer's findings, conclusions and recommendations to the Board of Commissioners which may impose sanctions for a Prime Contractor's and/or subcontractor's noncompliance with this Ordinance including, but not limited to:

(1) Withholding up to fifty percent (50%) of the current progress or final payment due the contractor until the Administrator determines that the contractor is in compliance. Following the withholding of up to fifty percent (50%) of the current progress payment, up to one hundred percent (100%) of further progress payments may be withheld until the contractor is found to be in compliance with the requirements of this Ordinance. The amount to be withheld will be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made good faith efforts to achieve such commitments.

(2) Declaring the Prime Contractor and/or subcontractor to be non-responsible and disqualify/debar the Prime Contractor and/or subcontractor from eligibility to bid on District construction contracts for a period of not less than one (1) year, and not more than three (3) years. An entity that is disqualified pursuant to the provisions of this Ordinance shall be precluded from participation on any District contract as a Prime Contractor, subcontractor and supplier for the period of disqualification. In cases of the use of false documentation, the making of false statements, fraud or misrepresentation, the disqualification period will be not less than eighteen (18) months, and not more than three (3) years for the second violation of the Ordinance and not less than twenty-four (24) months and not more than three (3) years for the third violation of the Ordinance from the date of disqualification established in the Board Order.

(3) Rejecting bids by the Prime Contractor for other contract(s) not yet awarded to that Bidder in instances of the use of false documentation, the making of false statements, fraud or misrepresentation.

(4) For any MBE, WBE or SBE that has misrepresented its MBE, WBE or SBE status and/or failed to operate as an independent business concern performing a Commercially Useful Function, declaring by the Director that the MBE, WBE or SBE ineligible to participate as a MBE, WBE or SBE in District contracts. A firm that has been declared ineligible may not participate as a MBE, WBE or SBE for a period of not less than one (1) year and not more than three (3) years.

(5) Forfeiting and deducting from the Prime Contractor's progress or final payments under the contract an amount up to the dollar amount of its MBE, WBE goal commitment that the contractor has failed to meet. The amount to be deducted will be based upon a determination of the extent to which the Prime Contractor made Good Faith Efforts to achieve such commitments.

(6) Referring the matter to the Office of the Attorney General or Cook County State's Attorney for follow-up action.

(c) The Administrator and Director will take action to prevent a contract from being awarded to a Prime Contractor or first-tier subcontractor disqualified from bidding hereunder for the period of disqualification.

(d) The District's attorneys' fees and costs will be assessed against the Prime Contractor and/or subcontractor where the Hearing Officer makes a finding that the Prime

Contractor or subcontractor used false documentation, made false statements, or committed fraud or misrepresentation.

(e) Notice of sanctions imposed by the Board of Commissioners for violations of the Ordinance by the Prime Contractor, subcontractor and/or supplier will be spread upon the public record by the District, including but not limited to publication in the Record of Proceedings of the Board of Commissioners, posting on the District's web site, publication in any type of media, newspaper publication and direct notice by letter to governmental entities.

(f) Any sanctions imposed against an entity shall also apply personally to all officers and directors of the entity or partners of the entity, and their successors and assigns with knowledge of the acts and omissions that give rise to the sanctions against the entity.

(g) The District may take other action, as appropriate, within the discretion of the Administrator, subject to the approval of the Hearing Officer and the Board of Commissioners.

Section 16. Other Federal Regulations

The provisions of this Ordinance shall not apply to any contract to the extent that different procedures or standards are required by any law or regulation of the United States and nothing herein shall be interpreted to diminish or supplant the present Equal Employment Opportunity Requirements contained in Appendices B, C, G, and I of Grant funded contracts or Appendix C of non-Grant funded contracts.

Section 17. Reporting and Review

The Board of Commissioners directs the District staff to report to the Board of Commissioners on an annual basis with respect to the following:

(a) The level of MBE, WBE or SBE participation achieved in each year in District construction contracts subject to Appendix D.

(b) Identification of any problems with the enforcement of Appendix D; and

(c) Any recommendations with respect to improving the implementation of Appendix D.

Section 18. Sunset Provision

This Appendix D shall be reviewed no later than five years from its adoption and shall expire on June 4, 2020 unless the District finds that its remedial purposes have not been fully achieved and that there is a compelling interest in continuing to implement narrowly tailored remedies to redress discrimination against MBEs and WBEs so that the District will not function as a passive participant in a discriminatory market in the Metropolitan Chicago construction industry.

Section 19. Repeal of Prior Inconsistent Provisions

All enactments and provisions heretofore adopted by this Board of Commissioners in the area of affirmative action in connection with construction contracts subject to this Ordinance that are inconsistent with the provisions of this Ordinance are hereby expressly repealed.

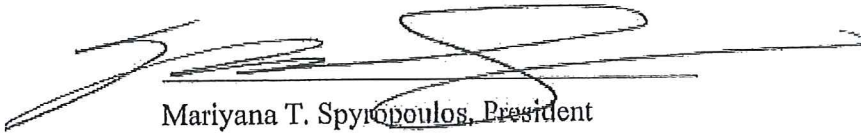
Section 20. Severability

If any clause, sentence, paragraph, section or part of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this Ordinance directly involved in the controversy in which the judgment shall have been rendered.

Section 21. Effective Dates

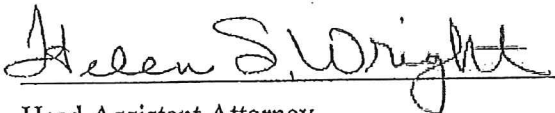
This amendment to revised Appendix D shall be effective and apply to all bids for contracts advertised after June 4, 2015.

ADOPTED:

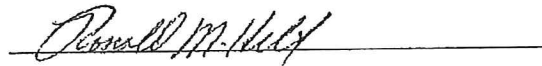


Mariyana T. Spyropoulos, President
Board of Commissioners of the
Metropolitan Water Reclamation
District of Greater Chicago

Approved as to form and legality:



Head Assistant Attorney



General Counsel

Exhibit F: Multi-Project Labor Agreement

***METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO
MULTI-PROJECT LABOR AGREEMENT***

This Agreement is entered into by and between the Metropolitan Water Reclamation District of Greater Chicago ("the District"), as owner, and each of the undersigned labor organizations signatory hereto on July 9, 1998 in Chicago, Illinois.

Due to the size, duration, cost and important public purpose to be served by the construction of District facilities, the District has determined that it is in its best interests to have construction projects covered by this Agreement as defined below ("covered projects") completed in the most timely, productive, efficient, economical and orderly manner possible, without labor disputes resulting in lost time or disruptions of any kind, including economic or area standards disputes or jurisdictional disputes which might interfere with or delay the projects.

The parties have further determined the desirability of eliminating the potential for friction and disruption of any construction site by ensuring that all work performed on covered projects, and at any location of any covered project, is performed by the trade union(s) which have traditionally performed and have trade and geographic jurisdiction over such work in the geographic jurisdiction of the District.

The parties acknowledge and agree that the District shall not be considered an employer of any employee of any contractor or subcontractor on any covered project.

To further these goals and to maintain a spirit of harmony, labor-management cooperation and stability, the parties hereto agree as follows:

1. Construction projects performed pursuant to contracts advertised and awarded by the District's Board of Commissioners after the date of execution of this Agreement shall be "covered projects" under this Agreement. Construction projects means all fixed works constructed for public use, and specifically excluding such matters as janitorial service, cafeteria service, truck hauling, landscaping, security service, window cleaning, clerical, thermographic inspection services, repair of heavy equipment, contracts for work to be performed in Fulton County and similar matters. The District shall be solely responsible for determining which projects are covered projects under this Agreement. Within a reasonable time after the District has determined in its sole discretion that a project is not covered by this Agreement it shall notify the Chicago & Cook County Building & Construction Trades Council ("the Council"). In the event of a disagreement as to coverage, the Council shall have fifteen (15) days from the time it is notified of coverage to file a protest with the District's Purchasing Agent. The parties shall thereafter endeavor to resolve the matter to their mutual satisfaction, but in any event, the District shall be solely responsible for determining coverage. Nothing herein shall prohibit or otherwise affect the District's right to cancel or otherwise terminate a contract.
2. A pre-job conference attended by representatives of the District, the contractors and the unions may be scheduled for a mutually available date prior to commencement of a covered project. The nature of the project, the covered work, the work assignments and any other matters of mutual interest will be discussed.

3. During the term of this Agreement, the District, as owner, shall not contract or subcontract, nor permit any other person, firm, company or entity to contract or subcontract, any construction, alteration, painting, repair, or other construction or construction related work to be done on any covered project under this Multi-Project Labor Agreement to any person, firm, company or entity that does not have, or does not agree to be bound by and operate under, a current collective bargaining agreement with a union or labor organization affiliated with the AFL-CIO Building Trades Department, and the Council, or their Affiliates which have jurisdiction over the particular work in question. Copies of all such current appropriate agreements constitute Appendix "A" to this Agreement, attached hereto and made an integral part hereof and as may be modified from time to time during the term of this Multi-Project Labor Agreement. The provisions of this Agreement shall apply to the parties, their agents and affiliates, as well as to all contractors and subcontractors of whatsoever tier level, performing work on, or for, covered projects under this Multi-Project Labor Agreement. Said provisions of this agreement shall be included in all requests or advertisements for bid and all construction contracts and/or subcontracts pertaining to covered projects.
4. With respect to a contractor or subcontractor who is the successful bidder but is not signatory to the applicable collective bargaining agreement, the collective bargaining agreement executed by said bidder shall strictly be limited in scope to the situs of the covered project.
5. The unions understand that due to the varied nature and size of covered projects, materials and equipment will in many cases be procured from sources outside of the geographic areas of the signatory unions. Such materials and equipment may be delivered by independent cargo haulers, rail, ship and/or truck drivers. The District agrees that it will request its contractors to request union affiliate employees to make deliveries to the covered project sites. The union agrees that deliveries will be made without disruption to any work on the covered project.
6. The unions acknowledge that some equipment and materials will be used on covered projects that is preassembled or prefabricated. To the extent consistent with existing collective bargaining agreements and applicable law, there will be no refusal by the unions to handle, transport, install or connect such equipment or materials.
7. During the term of this Agreement, the District and their contractors and subcontractors, shall engage in no lockout at the covered project sites.
8. During the term of this Agreement, no union or any of its members, officers, stewards, agents or representatives, or any employee, shall instigate, authorize, support, sanction, maintain, or participate in any strike, walkout, work stoppage, work slowdown, work curtailment, cessation or interruption of production, or in any picketing or handbilling of the covered project sites or any other District site for any reason whatsoever, including, but not limited to, a dispute between the District or any contractor or subcontractor and any union

or any employee, or by and between any union, or in sympathy with any union or employee or with any other individual or group.

9. Each union agrees that it will use its best efforts to prevent any of the acts forbidden in Section 8 and that, in the event any such act takes place or is engaged in by any employee or group of employees, each union further agrees that it will use its best efforts (including its full disciplinary power under its applicable Constitution and By-Laws) to cause an immediate cessation thereof. Each union also agrees that if any union, individual or group of employees on covered projects engages in any handbilling, picketing, strike, walkout, work stoppage, work slowdown, work curtailment, cessation or interruption, the other unions will consider such picketing or other work action as unauthorized and will refuse to honor any picket line established and the unions further agree to instruct their members to cross such unauthorized lines. Failure of any union or groups of employees to cross such unauthorized picket lines on any covered project shall be a violation of this agreement.
10. Any contractor or subcontractor shall have the right to discharge or discipline any employee who violates the provisions of this agreement or any project rules and regulations established pursuant to Section 12. Such discharge or discipline by a contractor or subcontractor shall be subject to the grievance-arbitration procedure of the applicable collective bargaining contract only as to the fact of such employee's violation of this agreement. If such fact is established, the penalty imposed shall not be subject to review and shall not be disturbed.
11. The unions understand and acknowledge that the District's contractors and subcontractors are responsible to perform the covered projects as required by the District. Therefore, the contractors have the complete authority, subject to any District approval provided by the contract, and applicable Collective Bargaining Agreements to:
 - a) Plan, direct and control the operation of all work.
 - b) Hire and lay off employees as the contractor feels appropriate to meet work requirements and/or skills required.
 - c) Determine work methods and procedures.
 - d) Determine the need and number of foremen.
 - e) Require all employees to observe contractor and/or District rules and regulations.
 - f) Require all employees to observe all safety regulations prescribed by the contractor and/or District and to work safely.
 - g) Discharge, suspend or discipline employees for proper cause.
12. It is agreed that contractors may implement reasonable project rules and regulations, and such rules and regulations shall be distributed to all employees on the project. It is

understood that these rules and regulations shall not be inconsistent with the terms of this agreement. Violation of the project rules and regulations is just cause for disciplinary action subject to the grievance procedure of the applicable Collective Bargaining Agreement as provided in Section 10.

13. The parties expressly authorize a court of competent jurisdiction to order appropriate injunctive relief to restrain any violation of this agreement and any form of self-help remedy is expressly forbidden.
14. The term of this agreement shall be three (3) years and shall be continued from year to year thereafter unless a sixty-day notice is given by the District or the council. Any project commencing during and determined to be covered under this agreement shall continue to be covered by its terms until the final acceptance of the project by the District. A project shall be deemed to commence with execution of the construction contracts and to conclude upon issuance by the District of a letter of final acceptance to the general contractor.
15. In addition to the obligations set forth in this agreement, in the event of a jurisdictional dispute by and between any of the unions, such unions shall take all steps necessary to promptly resolve the dispute. In the event of a dispute relating to trade or work jurisdiction, all parties, including the employers (contractors or subcontractors), agree that a final and binding resolution of the dispute shall be achieved as follows:
 - a) Representatives of the affected trades shall meet on the job site within forty-eight (48) hours after receiving notice in an effort to resolve the dispute. (In the event there is a dispute between affiliate locals of the same International, the decision of the General President, or his/her designee, as the internal jurisdictional decision authority of that International, shall constitute a final and binding decision.)
 - b) If no settlement is reached during the proceedings contemplated by Paragraph "15(a)" above, the matter shall be immediately referred to the Joint Conference Board, established by Standard Agreement between the Construction Employers' Association and the Chicago & Cook County Building & Construction Trades Council for final and binding resolution of said dispute.

It is explicitly agreed to by all parties that the parties to this agreement, as well as each of their contractors and subcontractors, specifically are bound to the jurisdiction of the Joint Conference Board. Said provision shall become a provision in all contractors and subcontracts issues under the scope of work envisioned in the District's construction contracts.

16. The District, all contractors and all unions signatory to this agreement shall not discriminate against any employees because of race, creed, color or national origin, age or sex as required

by laws, and they will conform with all state and federal laws, regulations or executive orders dealing with fair employment practices and civil rights.

17. This agreement shall be incorporated into and become a part of the Collective Bargaining Agreements by and between the District's contractors and subcontractors and each union signatory hereto. In the event of inconsistency between this agreement and any such Collective Bargaining Agreement, the terms of this agreement shall supersede and prevail.
18. This agreement constitutes the entire agreement between the parties hereto and may not be changed or modified except by the subsequent written agreement of the parties.
19. All parties represent that they have the full legal authority to enter into this agreement.
20. If any provision, section, subsection or other portion of this agreement shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in whole or in part, and such determination shall become final, such provision or portion shall be deemed to be severed or limited, but only to the extent required to render the remaining provisions and portions of this agreement enforceable. This agreement, as thus amended, shall be enforced so as to give effect to the intention of the parties insofar as that is possible. In addition, the parties hereby expressly empower a court of competent jurisdiction to modify any term or provision of this agreement to the extent necessary to comply with existing law and to enforce this agreement as modified.
21. Any liability under this agreement of the District, or any contractor or union signatory hereto shall be several and not joint. The District shall not be liable for any violations of this agreement by any contractor or signatory union, and any contractor or any signatory union shall not be liable for any violations of this agreement by any other contractor or any other union. In the event any provision of this agreement is determined to be invalid, illegal or unenforceable as specified in paragraph 20 neither the District, any contractor or any signatory union shall be liable for any action taken, or not taken, to comply with any court order.
22. In the event a dispute shall arise between a contractor or subcontractor any signatory union and/or fringe benefit fund as to the obligation and/or payment of fringe benefits provided for under the appropriate Collective Bargaining Agreement, upon notice to the District by the appropriate union signatory hereto of a claim for such benefits, the District shall forward such notification to the surety upon the contract, and to the general contractor. Neither contractors nor their subcontractors will be required to submit Certified Payroll Forms on covered projects.

Exhibit G: Required Maintenance

REQUIRED MAINTENANCE

Responsibility for the proper maintenance, service, repair and adjustments to each ECM, ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Client on an ECM by ECM basis on the Substantial Completion Date of each ECM as such date is determined in accordance with Section 3.B. of the Contract. The Client will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("**O&M Manuals**") will be provided to the Customer and Client by the ESCO. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Client. ESCO has no maintenance responsibilities under this Contract. ESCO shall have no responsibility for repairs and/or adjustments to the ECMs except to the extent set forth, and during the Warranty Period provided in Section 8 of this Contract.

Start-up and Shutdown: The Client's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to "proper" system start-up, operation, maintenance, and shut-down as defined in O&M Manuals.

Operations: The Client shall operate the equipment installed hereunder in accordance with parameters noted in Exhibit C, the manufacturers' recommendations, and any supplemental procedures supplied to the Customer or the Client by ESCO, including those set forth in the O&M Manuals. The Client shall operate the equipment and systems (including ancillary related systems) in accordance with the standards of service and comfort set forth in Exhibit C.

Maintenance: The Client's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Contract Time. The Client shall repair and maintain (i) the equipment and all other components which comprise each ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of each ECM, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals. Maintenance also refers to performing required maintenance of ancillary systems.

Exhibit H: Additional Performance of Work Requirements

ADDITIONAL PERFORMANCE OF WORK REQUIREMENTS

The ESCO shall be responsible to meet these performance requirements throughout the course of the Work. Exceptions shall only be allowed at the Customer's discretion and with Customer's prior written approval.

A. General Performance of Work Requirements

1. The following activities are specifically prohibited from occurring on the Customer's or Client's property and cannot be undertaken by the ESCO:

- a. The use of a jackhammer on site
- b. The use of Client space, other than Client space being constructed pursuant to this Contract
- c. The use of Client equipment
- d. Unauthorized use of Facility equipment
- e. The use of the Facility's trash compactor, dumpster, or container
- f. Unauthorized parking in restricted areas
- g. Unauthorized on-site storage
- h. Consumption of alcohol or controlled substances on site
- i. Unauthorized congregation in Facility public space
- j. Cooking or quantity food preparation on site
- k. Unauthorized use of Facility restroom areas
- l. Unapproved use of Facility utilities
- m. Objectionable, abusive, or unacceptable personal behavior of contractor personnel
- n. Improper disposal of wastes, residues, or debris
- o. Loud noises outside of the Work site considered by the Customer or Client as objectionable

2. A list of ESCO and Subcontractor employees needs to be submitted to the Customer Representative prior to commencing work. All Project employees are required to sign-in and out on a daily log sheet maintained at each Facility's security office designated by the Commission. All Project employees are required to wear their contractor badge at all times.

3. For Facilities equipped with freight elevators, all ESCO personnel shall utilize the freight elevator for access to the Work. Only in the event of an emergency shall ESCO personnel be permitted to use other means of egress.

4. All keys to construction site offices, fenced in areas, etc. are to be copied and given to security.

5. For Facilities equipped with freight elevators, all materials and waste shall be transported to and from the Work site via the freight elevators. Under no circumstance shall the passenger elevators be used without the written consent of the Customer.

6. It shall be the responsibility of the ESCO to isolate the heating, ventilating, and air conditioning systems of the Work site from the remainder of the Facility. Under no circumstance shall the ESCO utilize materials such as but not limited to: cleaning agents, paints, thinners, or adhesives that if released in the Work site atmosphere could spread to tenant areas, causing discomfort or posing any type of health hazard.

7. In the event that any fire and life safety system will need to be disabled to complete the Work, the ESCO must notify the Customer in advance of such event in writing.

8. In the event any soldering or welding apparatus is required to complete the Work, the ESCO must notify the Customer of such event. A welding permit must be obtained from the Customer if required for the Facility.

9. Removal of debris and delivery of any materials are limited to off-hours, 6 p.m. to 6 a.m. Arrangements should be made in advance with security for the Facility. All dumpsters need to be delivered after 6 p.m. and removed no later than 6 a.m. Arrangements are to be made with Facility security. The Facility will need to be cleaned of all dust and debris prior to 6 a.m. every day.

10. Freight elevators are to be protected on the walls and floor. If the elevator top needs to be removed, arrangements are to be made with the Facility's Chief Engineer.

11. Material Safety Data Sheets (MSDS) must be supplied to the Office of the Facility prior to any material entering the Facility.

12. All fire proofing and fire stops must be maintained. Patching must be completed as occurred to ensure integrity of the fire system.

13. Stairway doors shall not be propped open or blocked at any time.

14. Dry chemical fire extinguishers must be in the construction area.

15. Report any injuries to the security department as soon as possible.

16. Flooring throughout the building, including granite, terrazzo and carpeting, must be protected at all times.

17. It is the ESCO's responsibility to come to each Facility prepared with all tools and equipment necessary to complete the job. Customer and Client cannot supply lifts, ladders or tools at the Facilities to outside contract employees.

B. ACM-Related Performance of Work Requirements

1. In connection with the demolition, removal or handling of any ACM, the ESCO will keep such materials wet, and remove all items in full compliance with current Environmental Protection Agency (EPA), federal Occupational Safety and Health Administration (OSHA), Illinois Environmental Protection Agency (IEPA) and other applicable regulations and statutory requirements. All such items shall be disposed of at an EPA regulated landfill and ESCO shall submit to the Customer for its approval all required hazardous waste and closure documentation, including a listing of all certified personnel, chain of custody, disposal manifests, post-abatement clearance testing, recordkeeping and monitoring reports related to the Project.

2. The ESCO will be responsible to utilize all appropriate engineering controls (including but not limited to critical barriers, hepafiltered vacuums and dust pick-up systems, impermeable containers, etc.) and work methods to minimize fiber, lead or other Hazardous Materials released during handling, removal or disposal activities. The ESCO shall conduct regular biological monitoring and personal and area air sampling to verify lead levels and fiber counts on all portions of the Project. The ESCO shall document its removal activities and provide any and all documentation relating to such removal to the Customer upon request, including but not limited to, documentation regarding air sampling data, hazardous waste manifests, disposal receipts, training certificates and photographs. The ESCO will be responsible to provide all EPA, IEPA and OSHA monitoring, as required by applicable law.

3. Prior to commencing Work, the ESCO shall insure that all workers are instructed in all aspects of personal protection, work procedures, emergency evacuation procedures and the use of equipment, including procedures unique to the ACM abatement Work required by this Contract. The ESCO shall provide appropriate respiratory protection equipment for each worker and insure usage during potential exposure to any ACM or other Hazardous Materials. The ESCO shall have an adequate supply of hepafilter elements or other necessary filter elements and spare parts on sight for all respirators in use, and all respirators shall be chosen from among those jointly approved as being acceptable for protection by the Mine Safety and Health Administration (MSHA), and the National Institute for Occupational Safety and Health (NIOSH). The ESCO shall insure that any of its employees or subcontractors, of whatever tier, shall wear approved respirators at all times while abatement work is underway or while present in the work area.