PUBLIC BUILDING COMMISSION OF CHICAGO
FIRST AMENDMENT
CONTRACT NUMBER PS 1688C

THIS FIRST AMENDMENT AGREEMENT is made and entered into as of the 12th day of May, 2011, and shall be deemed and taken as forming a part of the Agreement for Surveyor Services ("Agreement") by and between the **PUBLIC BUILDING COMMISSION OF CHICAGO**, a municipal corporation of the State of Illinois ("Commission") and **DYNASTY GROUP, INC.** ("Consultant") dated March 23, 2010, with the like operation and effect as if the same were incorporated therein.

WITNESSETH:

WHEREAS, the Commission and Consultant have heretofore entered into an Agreement dated the 23rd day of March 2010, wherein the Consultant is to provide Surveyor Services for the Public Building Commission of Chicago; and

WHEREAS, the Consultant shall now provide Surveyor Services for Projects financed in whole or in part with Federal funds; and

WHEREAS, the Commission and Consultant now desire to amend the Agreement to include additional federal laws and regulations the Consultant must comply with for Projects financed in whole or in part with Federal funds;

NOW THEREFORE, in consideration of the provisions and conditions set forth in the Agreement and herein, the parties hereto mutually agree to amend the Agreement as hereinafter set forth.

It is agreed by and between the parties hereto that the sole modification of, changes in, and amendments to the Agreement pursuant to this Amendment are as follows:

TERMS

1. **Recitals**
   THE ABOVE RECITALS ARE EXPRESSLY INCORPORATED IN AND MADE A PART OF THE AMENDMENT AGREEMENT AS THOUGH FULLY SET FORTH HEREIN.

2. **Special Terms and Conditions**

   The Consultant shall comply with the Special Terms and Conditions set forth in Attachment A to this First Amendment.

Execution of this Amendment by the Consultant is duly authorized by the Consultant, and the signature(s) of each person signing on behalf of the Consultant have been made with the complete and full authority to commit the Consultant to all terms and conditions of this Amendment.

CONTRACT NUMBER PS 1688C – AMENDMENT 1

All capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement. Except as and to the extent that the terms of the Agreement are amended and modified herein, all terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the parties hereto have agreed and executed this First Amendment

PUBLIC BUILDING COMMISSION OF CHICAGO

BY: Rahm Emanuel Date: 8/24/11
Chairman

BY: [signature] Date: 8/25/11
Secretary

CONSULTANT: DYNASTY GROUP, INC.

By: [signature] Date: July 22, 2011
President

Subscribed and sworn to me this

22nd day of July 2011.

[signature]
Notary Public

"OFFICIAL SEAL"
IRMAGENE WILLIAMS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2/16/2015

My Commission expires: 2/16/2015

(Seal of Notary)

Approved as to form and legality

[signature] Date: 8/17/11
Neal & Leroy, LLC

File Path: Q:\Specialty Consultants\Specialties RFQ - 2010\RFQ for Surveying - 2010\Agreement\Dynasty Group - PS1688C_Surveying\Amendments\Amendment_to_the_Dynasty Group Inc_05-12-11.doc

PUBLIC BUILDING COMMISSION OF CHICAGO

ATTACHMENT A
TERMS AND CONDITIONS FOR FEDERALLY FUNDED CONTRACTS
PROFESSIONAL SERVICE

1. Fly America. The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their sub-consultants are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. Seismic Safety Requirements. The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Consultant agrees to ensure that all work performed under this Agreement including work performed by a sub-consultant is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

3. State Energy Conservation. The Consultant must comply with all current standards and policies relating to energy efficiency which are contained in the State of Illinois Energy conservation plan issued in compliance with the Energy Policy and Conservation Act, which are incorporated in this Agreement by reference.

4 Clean Water Requirements. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultants agree to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

5. Clean Air. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

6. Lobbying Disclosure Affidavit. The Consultant who applies for an award of $100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C.

1352. Such disclosures are forwarded from tier to tier up to the Commission and CTA. The certificate must be completed and returned and is attached hereto as Exhibit A.

7. Representation and Covenant by Consultant. Neither the Consultant nor any affiliate of the Consultant is listed on any of the following lists maintained by the Office Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the User Agency or the Commission may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise. The Consultant shall complete and return the certificates concerning debarment and suspension attached hereto as Exhibits B and C.

8. Obligation to Comply with CTA's Inspector General Ordinance. The Consultant Agreement agrees to comply with all of the requirements of CTA Ordinance No. 99-173, the provisions of which are incorporated into this Agreement to the same force and effect as if set forth in full herein. As required by Ordinance No 99-173, the Consultant agrees to cooperate fully and expeditiously with the CTA's Inspector General in all investigations or audits. This obligation applies to all officers, directors, agents, partners, and employees of the Consultant. The Consultant agrees to insert this provision in any subcontracts that it awards:

"The Consultant and all Subconsultants to this Agreement agree to provide all documents, data, files, and other information and access to all witnesses and locations as specified by the CTA's Office of the Inspector General in accordance with CTA Ordinance No. 99-173."

9. Incorporation of Documents. By executing this Agreement, the Consultant acknowledges and will comply with all Disadvantaged Business Enterprise terms, conditions and requirements set forth in Exhibit G to this Agreement.

10. Compliance with Laws. The Consultant shall at all times observe and comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state, and local government, now existing or hereinafter in effect, which may in any manner affect the performance of the Agreement. Provision(s) required by law, ordinance, rules, regulations or executive orders to be inserted shall be deemed inserted whether or not they appear in this Agreement or, upon application by either party, this Agreement 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 Agreement.

11. Ethics Ordinance. The Consultant agrees to comply with the CTA's Ethics Ordinance, CTA Ordinance No. 004-76, as amended from time to time, the provisions of which are hereby incorporated into this Agreement. The Consultant agrees that, as provided by Section 5.3 of the CTA Ethics Ordinance, any contract negotiated, entered into, or performed in violation of any of the provisions of the Ethics Ordinance shall be voidable as to the Commission at the election of the Commission.

12. Federal Changes. Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the CTA and/or the Regional Transit Authority ("RTA") and FTA, as they may be

amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement.

13. Access to Records and Reports.

a. The Consultant agrees to provide the Commission, the CTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

b. In any instance in which the Commission, on behalf of the CTA, enters into a contract for a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1) through other than competitive bidding, the Consultant shall make available records related to the contract to the Commission, the CTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

c. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

d. The Consultant agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than five years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Consultant agrees to maintain same until the Commission, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

14. No Obligation by the Federal Government.

a. The Commission and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Commission, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

b. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-consultant who will be subject to its provisions.

15. Program Fraud and False or Fraudulent Statements or Related Acts.

a. The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any

statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

b. The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

c. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-consultant who will be subject to the provisions.

16. Termination for Convenience by Government. The Commission may terminate this Agreement, in whole or in part, at any time by written notice to the Consultant when it is in the Government's best interest. The Consultant shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Consultant shall promptly submit its termination claim to the Commission to be paid the Consultant. If the Consultant has any property in its possession belonging to the Commission, the Consultant will account for the same, and dispose of it in the manner the Commission directs.

17. Suspension and Debarment.

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant is required to verify that none of the Consultants, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, or any Subconsultants are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Consultant is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

18. Compliance with 49 CFR Part 26. The Consultant and its Subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Commission deems appropriate. The Consultant agrees to include these assurances in all subcontracts.

19. Civil Rights.

a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. The Consultant shall comply with Section 404 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

c. The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

20. Illinois Human Rights Act. During the term of this Agreement, the Consultant must:

a. Refrain from unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination.

b. Comply with the procedures and requirements of the Illinois Department of Human Rights' regulations concerning equal employment opportunities and affirmative action.

c. Provide such information, with respect to its employees and applicants for employment, and assistance as the Department may reasonably request from time to time.

d. Have written sexual harassment policies that must include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment, utilizing examples; (iv) Consultant's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Illinois Human Rights Commission; (vi) directions on how to contact the Illinois Department of Human Rights and the Illinois Human Rights Commission; and (vii) protection against retaliation as provided in Section 6-101 of the Illinois Human Rights Act (775 ILCS 5/2-105). A copy of the policies must be provided to the Illinois Department of Human Rights upon request.

e. The Consultant must include verbatim or by reference, the provisions of this Section 20 in every subcontract it awards under which any portion of its obligations under this Agreement are undertaken or assumed, so that such provisions will be binding upon such Subconsultant. In the same manner as with other provisions of this Agreement, Consultant will be liable for such Subconsultant's compliance with applicable provisions of this clause; and further it will promptly notify the Commission and the Illinois Department of Human Rights in the event that any Subconsultant fails or refuses to comply therewith. In addition, the Consultant must not utilize any Subconsultant declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

21. Davis Bacon and Copeland Anti-Kickback Acts. If applicable according to their terms, the Consultant shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. §3141 et seq., and its related regulations which apply to all construction contracts in excess of $2000. The Davis-Bacon Act provides that all laborers and mechanics employed by it or any sub-contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. The Consultant certifies that it any sub-contractors shall comply with all requirements of the Davis-Bacon Act, specifically including, but not limited to, the provisions set forth in 29 CFR 5.5 which are set forth in Exhibit E.

The Consultant certifies that it and any subcontractors shall comply with the Copeland "Anti-Kickback" Act, 18 USC 874, and its related regulation at 29 CFR 3, which are incorporated herein by reference, and prohibits intimidating, forcing or otherwise inducing any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

22. Contract Work Hours and Safety Act. If applicable according to their terms, the Consultant must comply and assure compliance with the Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 3701 through 3708, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable Act)," 29 CFR Part 5; and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926. In addition to other requirements that may apply:

a. In accordance with sections of the Contract Work Hours and Safety Standards Act, the Consultant must assure that, for the Contract, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for Work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all

hours worked in excess of 40 hours in the work week. Determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.

b. In accordance with the Contract Work Hours and Safety Standards Act, the Consultant must assure that no laborer or mechanic working on a construction contract is required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with US DOL regulations "Safety and Health Regulations for Construction" 29 CFR Part 1926.

23. Executive Order 11246. If applicable according to its terms, the Consultant, and its Subconsultants and Subcontractors shall comply with Executive Order 11246 of September 25, 1965, entitled "Equal Employment Opportunity" and as its related regulations, which applies to all construction contracts awarded in excess of $10,000. The requirements of Executive Order 11246 are attached hereto as Exhibit F.

24. No Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees to comply with the requirements of 49 USC § 5323 (h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

25. Cargo Preference – Use of United States Flag Vessels.

If applicable, the Consultant agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

2. To furnish within 28 days following the date of loading for shipments originating within the United States, or within 42 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the Authority (through the Contractor in the case of Subcontractor bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W. Washington, D.C. 20590, marked with appropriate identification of the Project; and

3. To include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

26. Buy America. The Consultant acknowledges that the Buy America provisions, 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR Part 661.7, and include microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C.

5323(j)(2)(C) and 49 CFR Part 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.
provisions apply to federally funded contracts.

27. Prompt Payment.

a. The Consultant is required to pay all Subconsultant(s), both DBE and non-DBE, for all work which the Subconsultant has satisfactorily completed, no later than fourteen (14) days after the prime Consultant received payment from the Commission.

b. In addition, all retainage amounts must be returned by the Consultant to the Subconsultant no later than fourteen (14) business days after the Subconsultant has satisfactorily completed its portion of the contract work, including punch list items.

c. A delay in or postponement of payment to the Subconsultant requires good cause and prior written approval of the Executive Director.

d. All Consultants(s) are required to include, in each Subcontract, a clause requiring the use of appropriate arbitration or claim disputes mechanisms to resolve all payment disputes.

e. The Commission will not reimburse Consultant(s) for work performed unless and until the prime Consultant ensures that the Subconsultant(s) are promptly paid of the work they have performed to date as evidenced by the filing with the Commission of lien waivers and canceled checks.

f. The Commission will consider failure to comply with these prompt payment requirements a contract violation which may lead to any remedies permitted under law, including but not limited to, contract debarment.

28. Conflict of Interest.

a. No Board member, officer or employee of the CTA, Commission or other unit of local government, who exercises any functions or responsibilities in connection with the carrying out of the Scope of Services or the carrying out of the Scope of Services to which this Agreement pertains, may have any personal interest, direct or indirect, in this Agreement or the proceeds thereof.

b. In accordance with 41 USC § 22, the Consultant agrees that no member of or Delegate to the Congress of the United States, or the Illinois General Assembly and no members of the Chicago Transit Board, CTA or Commission employees, may be admitted to any share or part of this Agreement or to any private financial interest, profit, or benefit arising herefrom.

c. The Consultant covenants that it, its officers, directors and employees, and the officers, directors, and employees of such of its members if a joint venture, and Subconsultants presently have no interest and will not acquire any interest, direct or indirect, in the Scope of Services to which this Agreement pertains, which would conflict in any manner or degree with the performance of the Services hereunder. The Consultant further covenants that, in the performance of this Agreement, no person having any such interest will be employed by the Consultant.

d. An organizational conflict of interest exists when the nature of work to be performed under a proposed third party contract or subcontract may, without some restriction on future activities, result in an unfair competitive advantage to the third party contractor or subcontractor or impair its objectivity in performing the Agreement. The Consultant is prohibited from performing any work or

services for the Commission that conflict with work or services that the Consultant performs under any other contract with the Commission. The restrictions in this paragraph are applicable to all Subconsultants. The Consultant has sole responsibility for compliance with this provision. Any violation of this provision is a material breach of the Agreement, which is cause for termination.

29. Contracts Involving Experimental, Developmental, Or Research Work

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the Contract:

(a) Except for its own internal use, the Commission or Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Commission or Consultant authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Commission or Consultant using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Commission and the Consultant performing experimental, developmental, or research work required by the underlying contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained.

If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Commission or Consultant's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Commission and the Consultant agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Commission or Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Commission nor the Consultant shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Commission or Consultant and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Commission or Consultant identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Consultant agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Commission and the Consultant agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Consultant also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Commission and

Consultant agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Commission and the Consultant agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Consultant also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

30 Sensitive Security Information. The Consultant must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

31. Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation ("DOT"), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and the United States Department of Transportation Federal Transit Administration Master Agreement are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Commission or CTA requests which would cause the Commission or CTA to be in violation of the FTA terms and conditions.

32. Foreign Trade Restrictions. The Consultant and Subconsultant certifies that it:

1. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

2. Has not knowingly entered into any Contract or Subcontract for the Scope of Services with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; or

3. Has not procured any product nor subcontracted for the supply of any product for use on this Contract that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR Part 30.17, no Contract will be awarded to a Subconsultant who is unable to certify to the above. If the Consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on this Contract, the FTA may direct, through the Commission, cancellation of the Agreement at no cost to the Government or the Commission. Further, Consultant agrees that it will incorporate this provision for certification without modification in each subcontract. The Consultant may rely

on the certification of a prospective Subconsultant unless the Consultant has knowledge that the certification is erroneous. The Consultant will provide immediate written notice to the Commission if it learns that its certification or that of a Subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances.

Further, the Consultant must provide immediate written notice to the Commission if the Consultant learns that its certification or that of a Subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances.

Each Subconsultant must agree to provide written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which relied upon by the Commission in selecting the Consultant to perform the Services set forth in this Agreement. If it is later determined that the Consultant or any Subconsultant of any tier knowingly rendered an erroneous certification, the FTA may direct, through the Commission, cancellation of the Agreement or Subcontract for default at no cost to the Federal Government or the Commission.

Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America, and making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

33. Applicability to Sub-Consultants. The Consultant shall incorporate the terms and conditions set forth in this Attachment into any subcontracts it enters into with a sub-consultant. The Consultant acknowledges that the Commission shall hold the Consultant responsible for any sub-consultant's failure to comply with these terms and conditions, and to the extent it is damaged, may seek to recover from the Consultant all remedies available in equity and law.

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT A
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS
(LOBBYING CERTIFICATION)

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]. Standard Form - LLL is available via the Internet from the following URL http://www.whitehouse.gov/sites/files/omb/grants/sflll.pdf.

(3) The undersigned must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC § 1352 [as amended by the Lobbying Disclosure Act of 1995]. Any person who fails to file required certifications must be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 USC § 1352c(l)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form must be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Consultant/Contractor, Dynasty Group, Inc. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant/Contractor understands and agrees that the provisions of 31 USC § 3801, *et seq.*, apply to this certification and disclosure, if any.

(Signature Page Follows)

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS
(LOBBYING CERTIFICATION)

Executed this 22nd day of July, 2011.

By: _____
Signature of Authorized Officer

Zhong Chen, President
Typed Name and Title of Authorized Officer

Dynasty Group, Inc.
Typed Name of Contractor

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT B
CERTIFICATION OF PRIMARY PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS

The Consultant or Contractor for a major third party Contract), Dynasty Group, Inc., certifies, by submission of this, Dynasty Group, Inc. (Company Name) Proposal/Bid/Agreement that it or its "principals" [as defined in 49 CFR 29.995] or its "affiliates" [as defined in 49 CFR 29.905], to the best of their knowledge and belief:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this Proposal/Bid/Agreement been convicted of or had a civil judgment 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 or commission of embezzlement, theft, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offences enumerated in paragraph (2) of this certification; and

4. Have not within a three-year period preceding this application Proposal/Bid/Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

THE PRIMARY PARTICIPANT (APPLICANT OR POTENTIAL CONSULTANT OR CONTRACTOR FOR A MAJOR, THIRD PARTY CONTRACT) Dynasty Group, Inc. (Company Name)
CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ., ARE APPLICABLE THERETO.

, President
Signature and Title of Authorized Officer

July 22, 2011
Date

Zhong Chen, President
Typed Name and Title of Authorized Officer

If the Primary Participant is unable to certify to any of the statements in this certification, then the Primary Participant must attach an explanation to this certification.

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT C
CERTIFICATION OF LOWER-TIER P ARTICIP ANT
REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, VOLUNTARY
EXCLUSION AND OTHER RESPONSIBILITY MATTERS

The Lower-Tier Participant (applicant or potential Subconsultant/Subcontractor for a major third party Contract), _____, certifies, by submission of this
(Company Name)
Proposal/Bid/Agreement, that it and its "principals" [as defined in 49 CFR 29.995)], or its "affiliates" [as defined in 49 CFR 29.905] to the best of their knowledge and belief:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or agency;

2. Have not within a three-year period preceding this Bid/Proposal/Agreement been convicted of or had a civil judgment 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 or commission of embezzlement, theft, bribery, falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with commission of any of the offences enumerated in paragraph (2) of this certification; and

4. Have not within a three-year period, preceding this Proposal/Bid/Agreement, had one or more public transactions (Federal, state, or local) terminated for cause or default.

THE LOWER-TIER PARTICIPANT (APPLICANT OR POTENTIAL SUBCONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT) _____,
(Company Name)
CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC §§ 3801 *ET SEQ.* ARE APPLICABLE THERETO.

_____ _____
Signature and Title of Authorized Officer Date

_____
Typed Name and Title of Authorized Officer

If the Lower-Tier Participant is unable to certify to any of the statements in this certification, then the Lower-Tier Participant must attach an explanation to this certification.

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT D
CERTIFICATION REGARDING A DRUG FREE WORKPLACE

Pursuant to the definitions regarding a Drug Free Workplace provided in the Drug-Free Workplace Act of 1988, the Illinois Drug Free Workplace Act, 30 ILCS 580/1 *et seq.*, the Illinois Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/ 1 *et seq.*, the Federal Acquisition Regulation System ("FAR"), Procedures for Transportation Workplace Drug & Alcohol Testing Programs, 49 CFR 40, and Prevention of Alcohol Misuse & Prohibited Drug Use in Transit Operation", 49 CFR 655, Dynasty Group, Inc. ("Consultant/Contractor") certifies to the best of its knowledge and belief that it and its principals:

1. Maintain a workplace(s) (i.e. the site(s) for the performance of work done by the Consultant/Contractor in connection with this contract) safe and free from "controlled substances" as described in the Controlled Substances Act (21 U.S.C. 812) and as further described in regulations 21 CFR 1308.11 - 1308.15.

2. Have neither been convicted, including entering a plea of 'nolo contendere,' nor had sentence imposed by any judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

3. Publish and give notice to its employees and sub-contractors that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Consultant/Contractor's workplace, and also that actions will be taken against any and all employees, subconsultants and sub-contractors found to be violation of same.

4. Provide that all employees engaged in the performance of the contract receive a copy of the above statement, that the employee will abide by the terms of this statement, and that the employee will notify the employer in writing of the employee's conviction no later than five (5) calendar days after such conviction.

5. Provide for appropriate action against an employee for violation of any and all of these rules and that an employee convicted of drug abuse must satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health or law enforcement or other appropriate agency.

6. Comply with all drug and alcohol policies, testing programs and reporting requirements set forth in 49 CFR 40 and 49 CFR 655 whenever the Consultant/Contractor, its employees, subconsultants or sub-contractor(s) perform one or more of the following functions considered "safety sensitive~, as defined in 49 CFR 655:

   (1) Operating a revenue service vehicle, including when not in revenue service;
   (2) Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
   (3) Controlling dispatch or movement of a revenue service vehicle;
   (4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
   (5) Carrying a firearm for security purposes.

CERTIFICATION REGARDING A DRUG FREE WORKPLACE
Page 2 of 2

7. Have in place a written program which meets or exceeds the program requirements of the Illinois Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.) to be filed with the Commission and made available to the general public, or have in place a collective bargaining agreement which deals with the subject matter of the Illinois Substance Abuse Prevention on Public Works Projects.

8. Will otherwise comply with all drug and alcohol policies set forth in applicable Federal, State and local laws and regulations, including, but not limited to the Drug-Free Workplace Act of 1988, FAR, Illinois Drug Free Workplace Act, 49 CFR 40 and 49 CFR 655 in such version, prior or subsequent to amendment or revision, as is currently enforced or enforceable at and during the execution and performance of this Agreement.

In addition to other remedies, the Consultant's/Contractor's failure to comply with any part of the requirements of the Drug-Free Workplace Act of 1988, FAR, Illinois Drug Free Workplace Act, the Illinois Substance Abuse Prevention on Public Works Projects Act, 49 CFR 40 or 49 CFR 655, may render the Contractor subject to any or all of the following: suspension of payments, termination of contract for default, suspension or debarment.

, President
Signature and Title of Authorized Official

July 22, 2011
Date

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PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT E
DAVIS-BACON REQUIREMENTS

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either

directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the

contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT F

1. Notice Requirements for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

a. The Contractor's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth in the Contract.

b. 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:

Minority Group Employment for each trade 19.6%
Female Group Employment for each trade 6.9%

c. These goals are applicable to all the Contractor's Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the Work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

d. 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. 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.

e. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (U.S. Department of Labor, Office of Federal Contract Compliance, Programs, 230 South Dearborn Street – Room 434, Chicago, IL 60604) within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the Contract resulting from the solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

f. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" includes the City of Chicago, Cook, DuPage, Kane, Lake, McHenry and Will Counties (Standard Metropolitan Statistical Area).

2. Equal Opportunity Clause

During the performance of the Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are

employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of the said rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. **Standard Federal Equal Employment Opportunity Construction Specifications (Executive Order 11246)**

a. As used in these specifications:

(1) "Covered area" means the geographical area described in the solicitation from which this Contract resulted;

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

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

(4) "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).

b. 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 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 the Contract resulted.

c. If the Contractor is participating (pursuant to 41 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.

d. The Contractor shall implement the specific affirmative action standards provided in paragraphs g (1) through (16) 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. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

e. 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 11246, or the regulations promulgated pursuant thereto.

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

g. The Contractor shall take specific affirmative actions to ensure equal 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 document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) 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 project. 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.

(2) 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.

(3) 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 therefor, along with whatever additional actions the Contractor may have taken.

(4) 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 person 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.

(5) 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 compiled under g (2) above.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) Encourage present minority and female employees to recruit other minority persons and women 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 work force.

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

(12) 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.

(13) 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.

(14) 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.

(15) 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.

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

h. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (g (1) through (16)). 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 g(1) through (16) 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.

i. 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).

j. 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.

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

l. The Contractor shall carry out such sanctions and penalties for 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.

m. 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 60-4.8.

n. 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, 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.

o. 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).

ATTACHMENT C
SPECIAL CONDITIONS
DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT
REQUEST FOR QUALIFICATIONS

I. POLICY AND TERMS

A. The policy of the Public Building Commission of Chicago (Commission) is to create a level playing field on which Disadvantaged Business Enterprises (DBE) as defined in United States Department of Transportation (USDOT) Regulation 49 C F.R. Part 26 can complete fairly for contracts financed in whole or in part with federal funds.

B. The Commission has established the following DBE participation goal for this project:

Disadvantaged Business Enterprise Goal: 30%

C. The submitted Request for Qualifications (RFQ) proposal is to include a written commitment that the proposer will comply with the DBE goal by utilizing a DBE firm as a joint venture partner and/or a subconsultant.

D. The DBE participation goal shall be expressed as a percentage of the total contract price. The proposer may also meet the goal by showing good faith efforts to meet the goal as described in 49 C.F.R. Part 26 and as set forth in Section V below. **Any evidence of good faith efforts to utilize a DBE joint venture partner must be submitted with the sealed proposal or the proposal will be rejected in its entirety.**

E. The DBE participation goal shall apply to the total dollar value of this contract, inclusive of all amendments, modifications, options, and change orders. The proposer agrees to make its best effort to include DBE participation in any contract modification work.

F. The goal may be met, as further explained in Section IV hereof, by the proposer's status as a DBE, by a joint venture with one or more DBEs, by subcontracting a portion of the work to one or more DBEs, by the purchase of materials used in the performance of the contract from one or more DBEs or by any combination of the above or through a showing of good faith efforts as defined in Section V hereof.

G. A proposer who fails to meet the DBE goal and fails to demonstrate sufficient and reasonable good faith efforts shall not be eligible to be awarded the contract. All documentation of good faith efforts by a proposer **must** be included in the envelope or package containing the proposal.

H. The Commission prohibits agreements between a proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers.

II. DEFINITIONS

A. **"Area of Specialty"** means the description of the DBE's business, which has been determined by the Illinois Unified Certification Program (IL UCP), to be most reflective of the DBE's claimed specialty or expertise. Credit toward the DBE participation goal for this contract shall be limited to the participation of firms performing within their Area of Specialty. The Commission reserves the right to investigate and determine active DBE participation and applicable DBE credit specifically identified for this contract prior to award.

NOTICE: The Commission does not make any representations concerning the ability of any DBE to perform work within its Area of Specialty. It is the responsibility of the proposer to determine the capability and capacity of the DBE firms to satisfactorily perform the work proposed.

B. **"Commission or PBC"** means the Public Building Commission of Chicago, a municipal corporation, acting by and through its Chairman, Secretary, Assistant Secretary, Executive Director, including the Commission's Authorized Representative, as designated by the Executive Director in writing.

C. **"Disadvantaged Business Enterprise"** or **"DBE"** means a small business certified by the Illinois Universal Certification Program (IL UCP) as a business owned and controlled by socially and economically disadvantaged individuals in accordance with USDOT Regulation 49 CFR, Part 26.

D. **"Directory"** means the Directory of Certified Disadvantaged Business Enterprises maintained and published by IL UCP and entitled the "IL UCP DBE Directory." The directory will be available on the Chicago Transit Authority's web site. Proposers are responsible for verifying the current certification status of all proposed DBE's.

E. **"Executive Director"** means the Executive Director of the Commission or his or her duly designated representative as appointed in writing.

F. **"Good Faith Efforts"** means efforts to achieve a DBE contract goal as specified in 49 CFR, Part 26 and Section V hereof.

G. **"IL UCP"** means the Illinois Unified Certification Program.

H. **"Joint Venture"** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Proposers may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between a DBE firm and non-DBE firm.

In order to qualify for credit as a DBE, the DBE must be responsible for a distinct, clearly defined portion of the work and the DBE must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

I. **"Proposal"** includes the following Commission purchasing requests: Request for Qualifications (RFQ).

J. **"Proposer"** includes consultants as well as proposers. The terms "Proposer" and "Consultant" may be used interchangeably in these Special Conditions.

K. **"RFQ"** means a Request for Qualifications.

L. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or groups of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $19.570 million, or as revised from time to time, over the three (3) previous fiscal years.

M. **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizen of the United States (or lawfully admitted permanent residents) and who is in the following groups, the members of which are rebuttably presumed to be socially and economically disadvantaged:

1. **"Black Americans"**, which includes persons having origins in any of the Black racial groups of Africa;

2. **"Hispanic Americans"**, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. **"Native Americans"**, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. **"Asian-Pacific Americans"**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Thailand, Malaysia, Indonesia, Vietnam, Laos, Cambodia (Kampuchea), the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific (Republic of Palau), and the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Jauvlu, Nauru, Federated States of Micronesia or Hong Kong; and

5. **"Subcontinent Asian Americans"**, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

6. **Women.**

7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

The IL UCP, may determine on a case-by-case basis that individuals who are not members of one of the above-listed groups are socially and economically disadvantaged.

L. **"USDOT" or "DOT"** refers to the U.S. Department of Transportation.

III. JOINT VENTURES

The Commission, will evaluate the joint venture agreement submitted on behalf of the proposed joint venture and all related documents to determine whether these DBE requirements have been satisfied. In addition, the Commission, will consider the record of the joint venturers as joint venturers on other Commission contracts, if any.

NOTE: DBE/non-DBE joint ventures are creditable at any tier. Whenever a joint venture is proposed as the prime Consultant, Commission requires that each joint venturer sign the proposal submitted to the Commission.

IV. COUNTING DBE PARTICIPATION TOWARD THE CONTRACT GOAL

The inclusion of any DBE by the proposer in its proposal documents shall not conclusively establish the proposer's eligibility for full DBE credit for the firm's participation in the contract. The amount of DBE participation credit shall be based upon an analysis by the Commission, of the specific duties which will be performed by the DBE.

The proposer may count toward its DBE goal only expenditures to firms which are currently certified by the IL UCP and which perform a commercially useful function. A firm is considered to perform a

commercially useful function when it is responsible for the performance of a distinct element of the work and carries out its responsibilities by actually performing, managing and supervising the work involved.

To determine whether a firm is performing a commercially useful function, the Commission, will evaluate the amount of work subcontracted, industry practices and other relevant factors. The Commission, reserves the right to deny or limit DBE credit to the proposer where any DBE is found to be engaged in substantial pass-through activities with others.

DBE participation shall be counted toward the DBE goal in the contract as follows:

A. Once a DBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the DBE may be counted toward the DBE goal except as indicated below.

B. A proposer may count toward its DBE goal that portion of the total dollar value of a contract with an eligible joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.

C. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE subcontracts more than thirty percent (30%) or a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. Evidence may be presented by the proposer involved to rebut this presumption.

D. When a DBE subcontracts a part of the work under the contract to another firm, the value of the subcontracted work may only be counted towards the DBE goal if the DBE's subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.

E. The proposer may count one-hundred percent (100%) of its expenditures for materials and supplies required under the contract and which are obtained from a DBE manufacturer towards the DBE goal. The proposer may count sixty percent (60%) of its expenditures for material and supplies under the contract obtained from a DBE regular dealer towards its DBE goal. The terms "manufacturer" and "regular dealer" are defined in 49 C.F.R. Part 26.55(e)(1)(ii) and (2)(ii).

F. The proposer may count towards its DBE goal expenditures to DBEs which are not manufacturers or regular dealers, such as fees or commissions charged for services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies and transportation charges as set forth in 49 C.F.R. Part 26. However, the Commission, must determine the fee or charge to be reasonable and not excessive as compared with fees or charges customarily allowed for similar services.

G. The proposer must use good business judgment when negotiating with subconsultants and take a DBE's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason to fail to meet the DBE goal set forth in the contract, as long as such costs are reasonable.

V. GOOD FAITH EFFORTS

In order to be responsive, a proposer must make good faith efforts to meet the DBE participation goal set forth in the contract. The proposer must document the good faith efforts it made in that regard. Thus, the Proposal submitted to the Commission must be accompanied by written documentation prepared by the proposer evidencing all of its sufficient and reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, and ones, which could reasonably be expected to lead to sufficient DBE

participation to meet the contract DBE participation goal. Mere *pro forma* efforts are not acceptable and will be rejected by the Commission.

Good Faith Efforts require that the proposer consider all qualified DBEs, who express an interest in performing work under the contract. This means that the proposer cannot reject a DBE as unqualified unless the proposer has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the Consultant's efforts to meet the contract DBE participation goal.

The following list, which is not exclusive or exhaustive, sets forth the types of actions, which indicate good faith efforts on the part of a proposer to meet the DBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for submitting a proposal and the type of contract involved.

A. Attendance at a pre-proposal meeting, if any, scheduled by the Commission to inform DBEs of subcontracting opportunities under a given solicitation.

B. Advertisement in general circulation media, trade association publications, and minority-focus media for at least twenty (20) days before proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.

C. Written notification to capable DBEs that their interest in the contract is solicited.

D. Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:

1. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact.

2. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.

3. A statement explaining why additional agreements with DBEs were not reached.

E. For each DBE the proposer contacted but rejected as unqualified, the reason for the proposer's conclusion.

F. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the proposer or the Commission.

G. Documentation of efforts to utilize the services of small business organizations, community and consultant groups to locate qualified DBEs.

H. Documentation that the proposer has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.

I. Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner.

J. Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

VI. GOOD FAITH EFFORTS RECONSIDERATION

If it is determined that the apparent successful low proposers have failed to meet the requirements of the contract goal/good faith efforts, the Commission will provide them with **ONE** opportunity for administrative reconsideration, before the Commission awards the contract. This reconsideration will include the following:

A. The proposer will be permitted to either provide written evidence or to present oral argument at a pre-scheduled time that the documentation it submitted with its proposal met the DBE goal and/or showed good faith efforts to do so.

B. The Executive Director will review the evidence presented by the proposer and issue a written determination that the proposer has: 1) met the DBE goal; 2) not met the DBE goal but has made adequate good faith efforts to do so; or 3) has not met the DBE goal and the good faith efforts made were not adequate.

C. The decision of the Executive Director is final and may not be appealed to the Commission, the Chicago Transit Authority, its funding agencies or the USDOT.

D. The Commission will not award a contract to any proposer who does not meet the contract DBE participation goal or show good faith efforts to meet that goal. Thus, it is essential that all proposers submit ALL relevant documentation concerning the DBE goal and/or good faith efforts in the envelope or package containing their sealed proposal or upon request from the Commission prior to award of the Proposal.

VII. PROCEDURE TO DETERMINE COMPLIANCE WITH PROPOSAL REQUIREMENTS

The proposer must complete and sign Schedules C and D to the Contract documents and must sign Schedules C. Schedule C **MUST** be completed and signed by the DBE subconsultant(s). All three Schedules **MUST** be submitted at the same time as or prior to submittal of the sealed proposal or promptly upon request from the Commission, when applicable. In addition, any documentation evidencing the proposer's good faith efforts to meet the contract DBE goal must be submitted concurrently with submission of said Schedules. Any proposers submitting proposals without completed and executed Schedules B, C & D and/or evidence of good faith efforts, if applicable, will be deemed non-responsible. Proposers who have not submitted Schedules B, C and D with their proposals and who do not submit such Schedules promptly upon request from the Commission, will have their proposals rejected by the Commission.

A. Letters of Certification

1. A copy of each proposed DBE firm's current Letter of Certification or Re-certification from the IL UCP must be submitted with the proposal. **ALL CERTIFICATIONS BY THE IL UCP MUST BE PRE-CERTIFICATIONS as set forth in 49 CFR Part 26.55. This means that the DBE's certification must be issued by the IL UCP before the due date for proposals.**

2. All Letters of Certification or Re-certification issued by the IL UCP include a statement of the DBE firm's area of specialization and appropriate DBE goal credit (see Section IV. COUNTING DBE PARTICIPATION TOWARD THE CONTRACT GOAL). The DBE firm's scope of work set forth on Schedule C must conform to its stated area of specialization. Where a DBE is proposed to perform work not covered by its area of specialization, the DBE firm must request an expansion of its area of specialization from the IL UCP in writing plus any other documentation required by the IL UCP to process said request prior to the time set by the Commission for proposal opening. Further, the DBE's request must be agreed to by the Commission, and the DBE firm must be certified prior to **DUE DATE OF PROPOSALS.**

B. Joint Ventures

1. Where the proposer proposes to include in its proposal a DBE, which is a joint venturer, the proposer must submit a fully executed copy of the joint venture agreement with its proposal. The joint venture agreement must show that the DBE firm will be responsible for a clearly defined portion of the work to be performed, and that the DBE firm's capital contribution, control, management, risks and profits are commensurate with its ownership interest.

2. Further, the proposed joint venture agreement shall include specific details related to: 1) contributions of capital and equipment; 2) work items to be performed by the DBE's own forces; 3) work items to be performed under the supervision of the DBE; 4) the DBE management, supervisory and operating personnel to be dedicated to the performance of the project; and (5) the authority of each joint venturer to contractually obligate the joint venture and to expend funds. Failure to submit a copy of the joint venture agreement will cause the firm to be considered by the Commission to be non-responsible.

VIII. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT

A. The proposer shall, within three (3) calendar days of contract award, or prior to any work being performed by the DBE subconsultant, execute written subcontracts or purchase orders with the DBE subconsultants included in the proposal. In the event the proposer cannot complete the agreement with one or more DBE subconsultants within this three day period, the proposer must provide a written explanation for the delay and an estimated date by which the written agreement will be completed to the Commission. These written agreements shall be made available to the Commission, upon request. All contracts between the proposer and its subconsultants must contain a prompt payment clause as set forth in Section IX herein.

B. During the term of annual contracts, the proposer shall submit regular "Status Reports of DBE Subcontract Payments" in a form acceptable to the Commission. The frequency with which these reports are to be submitted, will be determined by the Commission, but in no event will reports be required less frequently than monthly. **In the absence of written notice from the Commission, the proposer's first "Status Report of DBE Subcontract Payments" will be due with the first invoice, with additional reports due with every subsequent invoice.**

C. In the case of a one-time procurement with either a single or multiple deliveries, a "Status Report of DBE Subcontract Payments," in a form acceptable to the Commission, indicating final DBE payments shall be submitted directly to the Commission. The information must be submitted prior to or at the same time as the proposer's final invoice to the Commission user department identified in the solicitation. (NOTICE: The original invoices must be submitted directly to the Commission's via the Collaboration Workspace pursuant to the Standard Terms and Conditions which are incorporated into the contract documents.) **Failure to follow these directions may delay final payment.**

IX. PROMPT PAYMENT TO SUBCONSULTANTS

A. The Consultant is required to pay all Subconsultants for all work that the Subconsultant has satisfactorily completed, no later than fourteen (14) calendar days after the Consultant has received payment from the Commission. All of the Consultant's contracts with its Subconsultants must state that the Subconsultant will receive payment within 5 days of the date that the Consultant has received payment from the Commission.

B. A delay in or postponement of payment to the Subconsultant requires good cause and prior written approval of the General Manager, Purchasing.

C. The Commission will not pay the Consultant for work performed unless and until the Consultant ensures that the Subconsultants have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with the Commission of, canceled checks (if requested), invoices and the Consultant's sworn statement that it has complied with the prompt payment requirements. Prime Consultants must submit a prompt payment affidavit, (form to be provided by the Commission) which identifies each subconsultant (both DBE and non-DBE) and the date and amount of the last payment to such subconsultant, with every payment request filed with the Commission, except for the first payment request, on every contract with the Commission.

D. Failure to comply with these prompt payment requirements is a breach of the Contract which may lead to any remedies permitted under law, including, but not limited to, Consultant debarment. In addition, Consultant's failure to promptly pay its Subconsultants is subject to the provisions of 50 ILCS 505/9.

X. DBE SUBSTITUTIONS

A. Arbitrary changes by the proposer of the commitments previously indicated in **Schedule D** are prohibited. No changes may be made by the proposer to the DBE firms listed on Schedule D after the opening of proposals but prior to contract award. However, in the event the Executive Director, after consulting with the Procurement Department, determines that a critical DBE subconsultant is non-responsible, the Commission may require that proposer replace the non-responsible DBE subconsultant prior to contract award. In that event, proposer must replace the non-responsible DBE subconsultant with a responsible, certified DBE subconsultant or show adequate good faith efforts as set forth Section V hereof, must submit all information required in subsection C.5 hereof, and must receive the prior written approval of the Executive Director for such substitution.

B. Further, after entering into each approved DBE subcontract, the Consultant shall neither terminate the subcontract for convenience, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without receiving prior written approval of the Executive Director. Such approval is required even if the DBE agrees with the change to the DBE's contract desired by the Consultant.

C. It may become necessary, at times, to substitute a new subconsultant in order to complete the contract work. The substitution procedure to be followed is:

1. The Consultant must immediately notify the Executive Director, in writing, of the proposed substitution of subconsultant. The Consultant's notification must include the specific reasons it intends to reduce the scope of or terminate a DBE subcontract; adequate documentation to support the Consultant's proposed action; and a proposed substitute firm to complete the DBE's portion of work.

2. The following is a non-exclusive list of the types of reasons, which justify substitution: the DBE was found not to be able to perform, or not to be able to perform on time; the DBE's work product was not acceptable; the DBE demands an unreasonable escalation of its price.

3. The following is a non-exclusive list of the types of reasons which do not justify substitution: a replacement firm has been recruited by the Consultant to perform the same work under more advantageous terms; performance issues by the DBE were disputed and every reasonable effort to have the dispute resolved or mediated has not been taken; the DBE has requested a reasonable price escalation which may be justified due to unforeseen circumstances (e.g., a change in scope of DBE's work).

4. If the subconsultant to be substituted for the DBE is not a DBE, the Consultant must show adequate good faith efforts as set forth in Section V hereof.

5. The Consultant's request for approval of a substitution must include the name, address, and principal official of the proposed substitute subconsultant and the dollar value and scope of work of the proposed subcontract. If the new subconsultant is a DBE, all DBE affidavits and documents required by **Schedule C** shall be attached.

6. The Commission will evaluate the submitted documentation and respond within fifteen (15) calendar days to the request for approval of a substitution. The Commission's response may approve the request, seek more information, request an interview to clarify the problem or reject the proposed DBE substitution, with the reasons for the rejection stated in the Commission's response. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the Commission will respond as soon as practicable.

7. Actual substitution by the Consultant may not be made prior to the Commission's approval. Once notified of the Commission's approval, the substitute subcontract must be executed within five (5) calendar days, and a copy submitted to the Executive Director.

D. The Commission will not approve extra payment for escalated costs incurred by the Consultant when a substitution of subconsultants becomes necessary in order to comply with the DBE requirements of the contract.

XI. NON-COMPLIANCE

A. Failure to comply with the DBE requirements of the contract or failure to use DBEs as stated in the proposal constitutes a material breach of contract. The Executive Director shall have the discretion to recommend to the to apply suitable sanctions to the Consultant if the Consultant is found to be in non-compliance with the DBE requirements. Such sanctions include, but are not limited to, withholding payment to the Consultant until corrective action is taken; suspension and/or termination of the contract, in whole or in part; and debarring or suspending the Consultant from entering into future contracts with the Commission.

B. The failure by the Consultant to use a DBE subconsultant to the extent the Consultant committed to use said DBE, gives the underutilized DBE specific contract remedies, including the right to damages, the right to resolve the dispute by binding arbitration before an independent arbitrator and the right to recover its reasonable expenses, including attorneys' fees, if the DBE is the prevailing party, as follows:

1. Damages. In the event the Consultant has not complied with the contractual DBE percentage and the change to the contractual DBE usage has not been approved by the Commission, an affected DBE may recover from the Consultant damages suffered by said DBE as a result of being underutilized. This provision is intended for the benefit of any DBE affected by underutilization and grants such entity third party beneficiary rights. Any rights conferred by this provision are non-waivable and take precedence over any conflicting provisions in the agreement between the Consultant and the DBE.

2. Arbitration procedures. If requested by the DBE, the DBE shall have the right to initiate binding arbitration of any dispute concerning damages suffered as a result of being underutilized. A DBE desiring to arbitrate must notify the Consultant in writing to initiate the arbitration process. Unless the affected parties agree to a different schedule in writing, within ten (10) days of receipt by the Consultant of the intent to arbitrate from the DBE, the above-described disputes must be arbitrated

in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601. All such arbitrations must be initiated by the DBE filing a demand for arbitration with the AAA; must be conducted by the AAA; and must be held in Chicago, Illinois.

3. Fees. All fees of the arbitrator are the initial responsibility of the DBE; provided, however, that the arbitrator is authorized to award reasonable expenses, including attorneys' and arbitrator fees, as damages to a prevailing DBE.

4. Entry of judgment. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

C. If the Consultant does not pay any subconsultant listed on a pay request within the time limits required under the prompt payment provision set forth in Section VIII hereof, the Consultant must pay the subconsultant an additional amount for interest at the lower of one percent (1%) per month or the highest lawful rate on the outstanding balance, for each month, prorated per diem for any partial month, that the Consultant fails or refuses to pay the subconsultant. All agreements between the Consultant and its subconsultants must provide for interest as set forth herein.

D. The Consultant, sub recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Commission deems appropriate.

The Consultant agrees to include this assurance in all subcontracts.

XII. RECORD KEEPING

The Consultant shall maintain records of all relevant data with respect to the utilization of DBEs and shall retain these records for a period of at least three (3) years after final acceptance of the work. Full access to said records shall be granted to the Commission and its designee. In addition, the Consultant shall, at all times, cooperate with the Commission's Inspector General.

The proposer must also create a proposers list, consisting of information about all subconsultants that submitted a proposal or quote. The proposers list will include the name, address, DBE/non-DBE status, age of firm and the appropriate range of annual gross receipts. Failure to submit this information will result in the firm being deemed non-responsible for the contract.

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