

**PUBLIC BUILDING COMMISSION OF CHICAGO**



**AGREEMENT  
CONTRACT NUMBER PS1007**

**TO PROVIDE  
CONSULTING SERVICES**

**FOR**

**JOB ORDER CONTRACTING (JOC) PROGRAM**

---

Mayor Richard M. Daley  
Chairman

Montel M. Gayles  
Executive Director

Richard J. Daley Center, Room 200  
50 West Washington Street  
Chicago, Illinois 60602  
[www.pbccchicago.com](http://www.pbccchicago.com)

**EXECUTION PAGE**  
**PROFESSIONAL SERVICES AGREEMENT**  
**CONSULTANT**

**AGREEMENT NO. PS1007**

**THIS AGREEMENT** dated as of September 12, 2006 but actually executed on the date witnessed, is entered into by and between the Public Building Commission of Chicago, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, (the "**Commission**"), and The Gordian Group, Inc., a Georgia corporation with offices at 140 Bridges Road, Suite E, Mauldin, South Carolina 29662, (the "**Consultant**"), at Chicago, Illinois.

**BACKGROUND INFORMATION**

The **COMMISSION** intends to implement a Job Order Contracting ("**JOC**") program in order to improve and/or construct certain Projects in Chicago, Illinois 60602 on behalf of various User Agencies, the "**JOC Program**":

**JOC Program: Job Order Contracting Consulting Services**

The Commission requires certain professional consulting and project management services and construction management services described in Schedule A attached to the Agreement, in connection with the JOC Program and desires to retain Consultant on the terms and conditions set forth in the Agreement to perform the Services. Consultant desires to be so retained by the Commission and has represented to the Commission that Consultant has the knowledge, skill, experience and other resources necessary to perform the Services in the manner provided by the Agreement.

The Consultant has consulted with the Commission, reviewed the Project Documents (defined below), and taken such other actions as Consultant deemed necessary or advisable to make it acquainted with the scope and requirements of the JOC Program and the Services. Consultant represents that it is qualified and competent by education, training and experience to develop, implement and support a JOC Program and provide Project Management Services with standards of reasonable professional skill and diligence.

The Commission has relied upon the Consultant's representations in selecting the Consultant.

EXECUTION PAGE (CON'T)

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

SIGNED on: 01 / 08 / 2007

PUBLIC BUILDING COMMISSION OF CHICAGO

*Richard M. Daley*  
Chairman

ATTEST:

*Edgardo Johnson*  
Secretary

CONSULTANT:  
The Gordian Group, Inc.

BY: *David L. Mahler*  
Secretary/Assistant Secretary

BY: *Edward A. Snow*  
President/Vice President/Treasurer

AFFIX CORPORATE  
SEAL, IF ANY, HERE

County of: Greenville

State of: South Carolina

Subscribed and sworn to before me by Edward A. Snow and David L. Mahler on  
behalf of Consultant this 2nd day of Jan, 2007.

*Mona R. Kramer*  
Notary Public

My Commission expires:

My Commission Expires  
April 1, 2014

(SEAL OF NOTARY)

**RESOLUTION OF  
THE BOARD OF DIRECTORS OF  
THE GORDIAN GROUP, INC.**

The Board of Directors of The Gordian Group, Inc. (the "Corporation") hereby unanimously agrees to the following resolution:

RESOLVED, that the Corporation desires to formally establish the authority for officers of the Corporation to sign proposals and execute contracts and agreements.

Be it FURTHER RESOLVED that the following officers are authorized to sign proposals and execute contracts and agreements on behalf of the Corporation:

President  
Vice President  
Treasurer  
Secretary  
General Counsel

I hereby certify that the foregoing is a full, true and correct copy of the Resolution duly and regularly adopted by the Board of Directors of The Gordian Group, Inc. on the 30<sup>th</sup> day of July 1999.

(Seal)

  
\_\_\_\_\_  
David L. Mahler, Secretary

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## TERMS

### 1) INCORPORATION OF RECITALS

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

### 2) DEFINITIONS AND USAGE

a) **Definitions.** The following phrases have the following meanings for purposes of the Agreement:

- i) **Agreement.** This Agreement for Consultant Services, between the Commission and Consultant, including all attached exhibits, schedules and documents and all such exhibits, schedules and documents incorporated by reference, all component parts and all amendments, modifications, or revisions made in accordance with its terms.
- ii) **Additional Services.** Additional Services to be provided by Consultant for the JOC Program pursuant to the provisions of Schedule A.
- iii) **Consultant.** The company or other entity identified in this Agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of this Agreement.
- iv) **Change in Scope of the Services.** A substantial change, whether by alteration, addition, or deletion therefrom, which necessitates a revision in the basic services and compensation of Consultant and is approved in writing by the Commission.
- v) **Commission.** The Public Building Commission of Chicago, a municipal corporation, acting by and through its Chairman, Secretary, Assistant Secretary, Executive Director, Director of Development, Managing Architect, Portfolio Manager or designated consultant or consultants, including the Commission's authorized representative, as designated by the Commission in writing.
- vi) **Day.** Unless otherwise indicated, the word "day" means calendar day. The phrase "business day" refers to Monday through Friday, except for national holidays.
- vii) **Deliverables.** The documents, in whatever format requested by the Commission, including correspondence, memos, reports, forms, recommendations, analyses, and interpretations that Consultant is required under this Agreement to provide to the Commission.
- viii) **JOC.** Job Order Contracting.
- ix) **JOC Contractor.** One or more contractors to be awarded a contract or contracts under the JOC Program.
- x) **JOC Program.** The contracting and consulting services provided by Consultant under this Agreement.
- xi) **Key Personnel.** Those job titles and individuals identified in Schedule E.
- xii) **Project.** Construction or improvement of a facility or facilities undertaken by the

Commission on behalf of another governmental agency ("User Agency").

- xiii) **Services.** Collectively, the duties, responsibilities and tasks that are required by the Commission to be performed by the Consultant as described in this Agreement.
- xiv) **Subcontractor.** Any person or entity hired or engaged by or through Consultant to provide any part of the Services, including subconsultants of any tier.
- xv) **Technical Personnel.** Includes partners, officers and all other personnel of Consultant, including technical typists assigned to the Project, exclusive of general office employees.
- xvi) **User Agency.** The governmental agency that requested the Commission to undertake the construction and/or improvement of the Project.

b) **Usage and Conventions.**

- i) **Captions and Headings.** The captions and headings of the various sections of the Agreement are used solely for reference purposes and do not construe, nor will they be deemed or used to construe, interpret, limit, or extend the meaning or scope of any work, clause, paragraph, or provision of the Agreement.
- ii) **The term "include,"** in all its forms, means "include, without limitation" unless stated otherwise.
- iii) **Terms of one gender** imply the other gender(s) unless the context clearly indicates otherwise. Use of the singular includes the plural and vice versa.
- iv) **References to "approved by the Commission"** or to "approval by the Commission" are not intended to and must not be interpreted to absolve Consultant from liability due to errors and omissions.

3) **INCORPORATION OF DOCUMENTS**

The documents identified in this Section are incorporated in and made a part of the Agreement. By executing the Agreement, Consultant acknowledges that Consultant is familiar with the contents of each of such documents and will comply fully with all applicable portions of them in performing the Services.

- a) **Project Documents.** The plans and specifications for the Project, if any, included in the Transfer Documents, as described on Schedule B.
- b) **Policies Concerning MBE and WBE.** The Commission's policies concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), provided in Exhibit C and the same as may be revised from time to time.

4) **ENGAGEMENT AND STANDARDS FOR PERFORMING SERVICES**

- a) **Engagement.** The Commission engages Consultant, and Consultant accepts the engagement, to provide the Services described in this Agreement, as those Services may be amended from time to time by mutual agreement of the Commission and Consultant.

- b) **Key Personnel.** Consultant must not reassign or replace Key Personnel without the written consent of the Commission. The Commission may at any time in writing notify Consultant that the Commission will no longer accept performance of Services under this Agreement by one or more Key Personnel listed in the Agreement in Schedule E. Upon that notice Consultant must immediately suspend the Key Person or Key Persons from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to approval by the Commission.
- c) **Adequate Staffing.** Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain for the duration of the Agreement an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. Consultant must include among its staff the Key Personnel and positions as identified in the Agreement and specified in Schedule E. The level of staffing may be revised from time to time by notice in writing from Consultant to the Commission and with prior written consent of the Commission.
- d) **Nondiscrimination.** In performing under this Agreement, Consultant will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice. Consultant certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 et seq; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et.seq. of the Municipal Code (1990), as amended. Consultant will further furnish such reports and information as may be requested by the Commission, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.
- e) **Employment Procedures; Preferences and Compliance.** Salaries of employees of Consultant, performing work under this Agreement, will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. Consultant certifies that it is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). Consultant will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et. seq. If, in the performance of this Agreement, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the Commission may withhold from Consultant, out of payments due to Consultant, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Agreement and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed

by the Commission for and on account of Consultant to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

- f) **Compliance with Policies Concerning MBE and WBE.** Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 3 above, the Consultant will use every reasonable effort to utilize minority business enterprises for not less than 25% and women business enterprises for not less than 5% of the value of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on October 1, 2004, concerning participation of minority business enterprises and women business enterprises on contracts, other than construction contracts, awarded by the Commission and to furnish to the Commission, such reports and other information concerning compliance with such Resolution as may be requested by the Commission from time to time.
- g) **No Damages for Delay.** Consultant will not assert charges or claims for damages against the Commission for any delays or hindrances from any cause whatsoever during the performance of any portion of the Services. Consultant will be compensated for such delays or hindrances, if any, based on the rates in Schedule C and by an extension of time to complete the Services, for such reasonable period as will be determined by the Commission. It is understood that the agreement of the Commission to allow the Consultant to perform the Services or any other obligation under the Agreement after the time provided for its completion will in no way operate as a waiver on the part of the Commission of any of its rights under the Agreement.
- h) **Records.** The Consultant must maintain accurate and complete records of expenditures, costs and time incurred by the Consultant and by consultants engaged by the Consultant in connection with the Project and the Services. Such records will be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Consultant's offices upon reasonable notice during normal business hours. The Consultant must retain all such records for a period of not less than five calendar years after the termination of the Agreement.
- i) **Time is of the Essence.** The Consultant acknowledges that time is of the essence in the performance of services required by the Agreement and that timely performance of the Services is vital to the completion of each Project. The Consultant must use every reasonable effort to expedite performance of the Services and performance of all other obligations of the Consultant under the Agreement and any other agreements entered into by the Commission which are managed or administered by the Consultant as a result of the Consultant's engagement under the Agreement.
- j) **Compliance with Laws.** In performing its engagement under the Agreement, the Consultant must comply with all applicable federal, state and local laws, rules, and regulations.
- k) **Meetings.** Meetings to discuss the progress of the Project and the Services and/or to review the performance of Consultant may be scheduled upon the Commission's request, at mutually agreeable times and locations. Consultant will cause such meetings to be attended by appropriate personnel of Consultant engaged in performing or knowledgeable of the Services. Consultant will take the minutes at these Progress Meetings and distribute these minutes to all parties in attendance.
- l) **Defects in Project.** Consultant must notify the Commission immediately if the Consultant obtains knowledge of an issue or circumstances which could result in a delay in the performance

of Services or significant problem in connection with the JOC Program or one of the Projects in the JOC Program, including construction defects, cost overruns or scheduling delays.

**m) Performance Standard.**

- i) Consultant represents that the Services performed under the Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards in the field consistent with that degree of skill and care ordinarily exercised by professionals performing similar services in the same locality at the same site and under similar circumstances and conditions. Consultant further promises that it will assign at all times during the term of the Agreement the number of experienced, appropriately trained employees necessary for Consultant to perform the Services in the manner required by the Agreement.
  - ii) Consultant must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Consultant must maintain current copies of any such licenses and provide these copies upon request by the Commission. Consultant remains responsible for the professional and technical accuracy of all Services furnished, whether by Consultant or others on its behalf. All deliverables will be prepared in a form and content reasonably satisfactory to the Commission and delivered in a timely manner consistent with the requirements of the Agreement.
  - iii) Consultant must not use any business or individual to provide the Services under this Agreement who is disqualified by the Commission or debarred under any other governmental agency's procedures.
  - iv) If Consultant fails to comply with the obligations under the standards of the Agreement, Consultant must perform again at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the Commission does not relieve Consultant of its responsibility to render the Services and deliverables with the professional skill and care and technical accuracy required by the Agreement. This provision in no way limits the Commission's rights against Consultant either under the Agreement, at law or equity.
- n) **Amendments to this Agreement.** The Commission may from time to time request changes to the terms and Services of the Agreement. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Consultant, will be incorporated in a written amendment to the Agreement. The Commission will not be liable for any changes absent such written amendment.
- o) **Compliance with The Chicago Standard.** The City of Chicago has adopted The Chicago Standard, a new set of construction standards for public buildings. The Chicago Standard was developed to guide the design, construction and renovation of municipal facilities in a manner that provides healthier indoor environments, reduces operating costs and conserves energy resources. It also includes provisions for outfitting, operating and maintaining such facilities. The Chicago Standard takes advantage of new building technologies and practices to enhance the well-being and quality of life of everyone working in and using such facilities, as well as the neighborhoods in which they are located. Consultant will familiarize itself with the current requirements of The Chicago Standard and perform the Services in such a manner as to achieve,

at a minimum, the LEED™ rating of Certified for each Project.

- p) **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.

#### 5) **TERM**

- a) **Duration.** The term of the Agreement begins on the Commencement Date of Services specified in Schedule A or on the date specified in the initial Notice to Proceed ("NTP"), , and subject to the provisions in this section, expires upon completion of the Services and acceptance of the Deliverables by the Commission or, if the Services are of an on-going nature, on the Completion Date of the Services specified in Schedule A. The term of the Agreement may be extended by the mutual agreement of the Commission and Consultant.
- b) **Termination by the Commission.** The Commission has the right, at any time, to terminate this Agreement in whole or in part, with or without cause, by written notice given to the Consultant at least 30 days before the effective date of termination. So long as Consultant is not in default under this Agreement at the time of termination, the Commission will pay Consultant, in accordance with the terms of this Agreement, all compensation and reimbursements due to Consultant for periods up to the effective date of termination. The Commission may, however in its sole discretion, reimburse Consultant for actual expenses approved by the Commission.
- c) **Suspension by the Commission.** The Commission also has the right, at any time and from time to time, with or without cause, to suspend the performance of Consultant hereunder with respect to all or any part of the Services, by written notice given to Consultant at least five days before the effective date of suspension. During the notice period Consultant must wind down its Services. So long as Consultant is not in default under this Agreement at the time of suspension, the Commission will pay Consultant, in accordance with the terms of this Agreement, all compensation and reimbursements due to Consultant for periods up to the effective date of suspension. If Consultant's performance is suspended more than 90 days under this provision, Consultant may, at its option, exercise its rights under this section to terminate this Agreement.
- i) During the period Consultant's performance is suspended, Consultant is not entitled to incur fees or bill the Commission, except for Consultant's time for participating in substantive meetings concerning the JOC Program or any Project included in the JOC Program (but not for meetings to discuss Consultant's invoices or claims). Consultant may bill such time spent during a suspension only if Consultant's participation is requested by the Commission and only for the time of one individual per meeting. Commission will pay

for such time at the applicable hourly billing rate set forth in Schedule C. Participation in meetings at the request of the Commission is not considered to be resumption of Consultant's Services.

- ii) The number of days during which the suspension period lasted will be added to the Completion Date of Services set forth in Schedule A, establishing a revised Completion Date of Services, and at the direction of the Commission the Consultant will re-commence its Services at the point they were suspended and may resume billing in accordance with the terms of the Agreement.
- d) **Effect of Termination or Suspension.** Termination or suspension of this Agreement in whole or in part does not relieve Consultant from liability for its performance of any obligation under this Agreement that was performed or was to have been performed by Consultant on or before the effective date of termination or suspension. In no event will the Commission be liable to Consultant for any loss, cost or damage, including lost profits, which Consultant or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided in it.
- e) **Termination by the Consultant.** If the Services, in whole or substantial part, is stopped for a period longer than 90 days under an order of any court or other governmental authority having jurisdiction, or as a result of an act of government, such as a declaration of national emergency making materials unavailable, through no act or fault of Consultant, or if the Commission suspends Consultant's performance of its Services for more than 90 days for any reason, or if the Commission fails after notice and an opportunity to cure to make any payment or perform any other obligation hereunder, Consultant has the right to terminate this Agreement, by written notice given to the Commission at least 7 days before the effective date of termination, and has the right to recover from the Commission all compensation and reimbursements earned by Consultant under this Agreement for periods up to the effective date of termination. If Consultant for any reason does not exercise its right to terminate hereunder, and if the Consultant's Services are later resumed, Consultant will provide its Services as set forth in this Agreement without adjustment of compensation.
- f) **Force Majeure.** Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. If a force majeure occurs, the party delayed or unable to perform will give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of Consultant under the Agreement for the duration of the force majeure. The Commission will not be obligated to pay for the Services to the extent and for the duration that performance of the Services is delayed or prevented by force majeure, but, provided Consultant is not in default of any obligation of Consultant under the Agreement, the Commission will pay to Consultant, according to the terms of the Agreement, all compensation and reimbursements due to Consultant for periods up to the effective date of suspension. The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law. The term does not include, for example, typical Chicago inclement weather (i.e. weather the severity of which is less than a standard deviation from the 5-year mean for the Chicago Midway area for Projects located south of Madison Street or the O'Hare area for Projects located north of Madison Street, as established by the National Oceanic and Atmospheric Administration) or labor strikes.

**6) COMPENSATION OF CONSULTANT; REIMBURSEMENT FOR EXPENSES**

The Commission will compensate Consultant for the Services in the amount and manner set forth on Schedule C.

**7) RIGHTS AND OBLIGATIONS OF COMMISSION**

a) **General and Specific.** In connection with the administration of the Services by the Commission and the performance of the Agreement by Consultant, the Commission has the following rights and obligations, in addition to those provided elsewhere in the Agreement:

i) **Information.** The Commission will provide Consultant all information reasonably required concerning the Commission's requirements for the JOC Program and the Services.

ii) **Review of Documents.** Subject to the provisions of the Agreement, the Commission will make reasonable efforts to examine documents submitted by Consultant and render decisions pertaining to them with reasonable promptness.

iii) **Site Data.** To the extent the Commission determines necessary for Consultant to perform the Services, the Commission may furnish, or may authorize Consultant to obtain information concerning availability of both public and service and utility lines from a company or companies approved by the Commission as Reimbursable Expenses. See Schedule A for more details.

iv) **Tests and Reports.** To the extent required for Consultant to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, results of test borings and pits for determining soil and subsoil conditions and/or other tests and reports or may authorize Consultant to procure such tests and reports from a consultant or consultants approved in writing by the Commission. See Schedule A for more details. The Commission will pay for such tests and reports, however, the Commission may direct Consultant to procure such professional services as Reimbursable Expenses and submit invoices to the Commission for payment as provided in Schedule C.

v) **Drawings.** To the extent required for the Consultant to perform the Services, the Commission may furnish architectural and engineering design drawings and shop drawings (collectively the "Drawings") or may authorize the Consultant to procure Drawings from a consultant or consultants approved in writing by the Commission. In no event shall the Consultant be responsible for approval of Drawings. The Commission shall pay Consultant's invoices for Drawings procured by the Consultant as Reimbursable Expenses as provided in Schedule C.

b) **Limited Exculpation of Consultant.** Consultant is not liable to the Commission under the provisions of subparagraph 8(b) for the substantive content of such tests and reports obtained from a consultant engaged by Consultant and approved by the Commission, but only if Consultant has exercised reasonable diligence in the selection of the consultant and also only if Consultant has caused the consultant to purchase and maintain professional liability insurance in accordance with Schedule D, protecting the Commission, the User Agency, and Consultant from any loss or claim arising out of the consultant's performance. See Schedules A and D for detailed requirements.

c) **Audits.** The Commission has the right to abstract and audit the books of Consultant and its

subcontractors on all subjects relating to the JOC Program and/or the Services.

- d) **Legal, Auditing and other Services.** The Commission will arrange and pay for such legal, auditing, insurance counseling and other services as the Commission, in its sole discretion, may determine to be required for the JOC Program. Such payments will not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of Consultant.
- e) **Designated Representatives.** The Commission may designate, at its sole discretion, one or more representatives authorized to act in its behalf. No extras or credits to subcontractors will be authorized by anyone other than the Commission.

#### 8) INDEMNIFICATION

- a) **Indemnity by Third Parties.** The Commission will require, by appropriate provision in each contract let by the Commission after the date of this Agreement with respect to the JOC Program and the Services that the contractor(s) and consultant(s) under such contracts must indemnify, save and hold harmless the Commission, the User Agency and Consultant, and each of them, and their respective commissioners, board members, officers, officials and employees, from all claims, demands, suits, actions, losses, costs and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise out of the work under such contract, and that the contractor(s) and consultant(s) under such contracts will purchase and maintain during the life of such contract such insurance as the Commission may require. The amount and insurer for such insurance are subject to approval by the Commission.
- b) **Indemnification by Consultant.** Consultant must indemnify, defend, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, officials, and employees, from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, (including court costs and expert's fees) that may arise out of or be based on any injury to persons or property that is, or is claimed to be, the result of Consultant's performance or non-performance of the agreement or of any error, omission or negligent or willfully wrongful act of Consultant, or any person employed by Consultant, or any Subcontractor retained by Consultant in connection with the Project and the Services.

#### 9) INSURANCE MAINTAINED BY CONSULTANT

Consultant will purchase and maintain at all times during the performance of Services, for the benefit of the Commission, the User Agency and Consultant, insurance coverage which will insure the Commission, the User Agency and Consultant against claims and liabilities which could arise out of the performance of such Services, including the insurance coverages set forth in Schedule D to this Agreement.

#### 10) DEFAULT

- a) **Events of Default.** Each of the following occurrences constitutes an Event of Default by Consultant under the Agreement:
  - i) Failure or refusal on the part of Consultant to duly observe or perform any obligation or agreement on the part of Consultant contained in the Agreement, which failure or refusal continues for a period of 10 days (or such longer period as the Commission, in its sole

discretion, may determine if such failure is not capable of being cured within such 10-day period) after the date on which written notice of it has been given to Consultant by the Commission;

- ii) Any representation or warranty of Consultant set forth in this Agreement or otherwise delivered pursuant to the Agreement will have been false in any material respect when so made or furnished;
- iii) Consultant becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals will take any action in furtherance of any of the foregoing;
- iv) Any proceeding is commenced against Consultant seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within 60 days following commencement of the proceeding, or appointment of, without Consultant's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of Consultant's assets and properties, and such appointment will not have been vacated, stayed, discharged, bonded or otherwise dismissed within 60 days of the appointment.
- v) Consultant's material failure to perform any of its obligations under the Agreement including any of the following:
  - (1) Failure due to a reason or circumstance within Consultant's reasonable control to perform the Services with sufficient personnel, and equipment or with sufficient material to ensure the performance of the Services;
  - (2) Failure to perform the Services in accordance with the requirements of the Agreement;
  - (3) Failure to properly perform the Services or inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
  - (4) Failure to promptly re-perform within a reasonable time the Services that were rejected as erroneous or unsatisfactory;
  - (5) Discontinuance of the Services for reasons within Consultant's reasonable control;
  - (6) Failure to comply with a material term of the Agreement, including the provisions concerning insurance and nondiscrimination;
  - (7) Any change in ownership or control of Consultant without prior written approval of the Executive Director which approval the Executive Director will not unreasonably

withhold;

(8) Consultant's default under any other agreement it presently may have or may enter into with the Commission. Consultant acknowledges that in event of a default under the Agreement the Commission may also declare a default under any such other agreements.

- b) **Remedies.** If an Event of Default occurs and continues, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate the Agreement upon written notice to Consultant, in which event the Commission has no further obligations hereunder or liability to Consultant except as to payment for Services actually received and accepted by the Commission through the effective date of termination. No courses of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right will operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.
- c) **Remedies Not Exclusive.** No right or remedy in the Agreement conferred upon or reserved to the Commission is exclusive of any other right or remedy provided or permitted under this Agreement or by law or equity, but each is cumulative of every other right or remedy given in the Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

## 11) DISPUTES

- a) **General.** Consultant will present all disputes arising under, related to or in connection with the terms of the Agreement or its interpretation, whether involving law or fact or both, including questions concerning allowability of compensation, and all claims for alleged breach of contract, in writing to the Executive Director for final determination.
- b) **Procedure.** Consultant will make all requests for determination of disputes in writing specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the position of Consultant; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identification of any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. Consultant will promptly provide the person designated by the Commission (the "Commission's Representative") with a copy of the request for determination of the dispute. The Commission's Representative will have 30 business days to respond in writing to the dispute by supplementing the submission or providing its own submission to the Executive Director. Failure by the Commission's Representative to respond will not be an admission of any allegations made in the request for dispute resolution, but will constitute a waiver of the opportunity to respond to such allegation(s), if any. The Executive Director may thereafter reach his decision in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable.
- c) **Effect.** The Executive Director's final decision will be rendered in writing no more than 45 business days after receipt of the response by the Commission's Representative was filed or was due unless the Executive Director notifies Consultant that additional time for the decision is necessary. The Executive Director's decision will be conclusive, final, and binding on all parties. Consultant must follow the procedures set out in this Section and receive the Executive Director's final decision as a condition precedent to filing a complaint in the Circuit Court of Cook County. Consultant will not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period.

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

## 12) CONFIDENTIALITY

All of the reports, information, or data prepared or assembled by Consultant under the Agreement are confidential, and Consultant must not make such reports, information or data available to any party without the prior written approval of the Commission. In addition, Consultant must not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning the Agreement, the JOC Program or the Services. If Consultant is served with a subpoena requiring the production of documents or information which is deemed confidential, Consultant will immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.

## 13) ASSIGNMENT

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

## 14) RELATIONSHIP OF PARTIES

Under the Agreement, the relationship of Consultant to the Commission is that of an independent contractor and Consultant, except to the extent expressly provided to the contrary in the Agreement, will have no right or authority to make contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. The Agreement will not be construed as an agreement of partnership, joint venture, or agency.

## 15) GENERAL

- a) **Consultant's Authority.** Consultant represents that its execution of the Agreement is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a

partnership or a joint venture, and the signatures(s) of each person signing on behalf of Consultant have been made with complete and full authority to commit Consultant to all terms and conditions of the Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

- b) **Counterparts.** The Agreement may be executed in any number of counterparts, any of which will be deemed an original.
- c) **Entire Agreement.** The Agreement constitutes the entire understanding and agreement between the parties to this Agreement and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged in this Agreement. The Agreement must not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties.
- d) **Governing Law.** The Agreement has been negotiated and executed in the State of Illinois and will be construed under and in accordance with the laws of the State of Illinois. The parties agree that any litigation between them concerning this Agreement or the JOC Program will be adjudicated in the Circuit Court of Cook County, Illinois and waive their respective rights to a trial by jury. The Consultant agrees and consents to service of process by certified or registered mail to the address stated herein.
- e) **No Waiver.** The waiver by either party of any breach of the Agreement will not constitute a waiver as to any succeeding breach.
- f) **Notices.** All notices required to be given under this Agreement must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Commission's Representative and the Executive Director, if appropriate, or to Consultant at their respective addresses set forth above, as appropriate. If given as provided in this Agreement, such notice is deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or Consultant may, from time to time, change the address to which notices will be sent by giving notice to the other party in the manner provided in this subparagraph.
- g) **Non-liability of Public Officials.** No Commissioner, employee, agent, officer, or official of the Commission is personally liable to Consultant or its subcontractors, and Consultant and its subcontractors are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Consultant or its subcontractors under this Agreement.
- h) **Severability.** If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the Agreement and such invalidity or unenforceability will not affect any other provision of the Agreement, the balance of which will remain in full force and effect; provided, however, that if such provision is deemed invalid or unenforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.
- i) **Successors and Assigns.** Except as otherwise provided in the Agreement, the Agreement is binding upon and inures to the benefit of each of the parties to the Agreement and their respective successors and assigns.
- j) **Non-appropriation of Funds.** If funds have not been appropriated in full or in part, the Commission has the right to terminate the Agreement.

#### **16) JOC System License.**

The Consultant hereby grants to the Commission, and the Commission hereby accepts from the Consultant for the term of this Agreement, a non-exclusive right, privilege, subscription and license to use the Consultant's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") for the sole purpose of operating the Commission's Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to, the Consultant's Construction Task Catalog<sup>®</sup> (also commonly referred to as CTC, Unit Price Book and UPB), PROGEN<sup>®</sup> software and support documentation, training materials and other proprietary materials developed by the Consultant. Upon the expiration or termination of this Agreement as provided herein, the Commission shall return to the Consultant all Proprietary Information in the Commission's possession.

The Commission acknowledges that disclosure of Proprietary Information will result in irreparable harm to the Consultant for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of the Consultant. The Commission further acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of the Consultant in the Proprietary Information during and after the term of this Agreement and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Commission, subject to federal and state laws related to public records disclosure.

Upon expiration or termination of this Agreement as provided herein, the Consultant shall provide all data generated by the Commission in a form accessible by a standard database program, such as Microsoft<sup>®</sup> Access<sup>®</sup>.

In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Agreement, this JOC System License shall take precedence.

#### **17) Commission Provided Office Space and Equipment**

The Commission shall provide Consultant staff with furnished office space and access to the Internet, local telephone service, printers, copiers and facsimile machines.

**SCHEDULES FOLLOW.**

**SCHEDULE A  
SCOPE OF SERVICES**

**JOC Program: Job Order Contracting Consulting Services**

Description and Term of Services: The Consultant will perform certain consulting Services including but not limited to the development, implementation and support of a Job Order Contracting ("JOC") program and provide Consulting and Project Management Services and Construction Management Services, as applicable, for the Commission as described below. The Commencement Date for Services will be established by issuance by the Commission of a notice to begin those Services ("Notice to Proceed" of "NTP"). The term of this Agreement will expire when all Services required by this Agreement have been completed to the reasonable satisfaction of the Commission.

<b>Commencement Date of Services</b>	<b>Upon issuance of the initial NTP for each Project to be included in the JOC Program</b>
<b>Completion Date of Services</b>	<b>Upon acceptance of all Services by the Commission</b>

The Consultant will:

**A.1. Consulting Services to Develop, Implement and Support a JOC Program**

- A.1.1. Provide experienced staff that shall be responsible for the JOC Program development and implementation. This staff shall report directly to the Commission and shall be available to assist the Commission with any JOC Program related issues.
- A.1.2. Develop the JOC Program documents including the Construction Task Catalog<sup>®</sup>, Technical Specifications, Contract and General Conditions and Bid Documents.
- A.1.3. Customize and install, for utilization in the JOC Program, Consultant's JOC proposal development system PROGEN<sup>®</sup>, which shall be capable of generating the JOC documents, including contractor cost proposals, independent cost estimates and other management reports and forms.
- A.1.4. Provide access and test PROGEN<sup>®</sup> on Commission computers. The Commission shall have no restrictions on the number of PROGEN<sup>®</sup> users in Commission's JOC Program.
- A.1.5. Test PROGEN<sup>®</sup> under actual field conditions prior to the implementation of JOC.
- A.1.6. Conduct the activities necessary for establishing the structure of the JOC Program, inform internal Commission staff as well as the contracting community about JOC, assist with procurement of the JOC construction contractors, and assist with development of the actual Execution Procedures that the Commission shall use in executing the JOC Program. Specific services shall include:
  - A.1.6.1. Develop the JOC Program Structure/Bidding Strategy.
  - A.1.6.2. Prepare and Conduct Pre-Bid Seminars.
  - A.1.6.3. Prepare and Conduct an External Marketing Program.
  - A.1.6.4. Prepare and Conduct an Internal Marketing Program.

A.1.6.5. Coordinate and Develop the JOC Execution Procedures.

A.1.7. Develop a comprehensive JOC training program, which shall include different course modules in order for the Commission staff to receive specialized training.

A.1.8. Provide comprehensive JOC support to the Commission for the term of this Agreement, monitor the overall JOC Program and prepare any status reports required by the Commission.

**A.2. JOC Program Project Management Services.**

A.2.1. Determine if a Project is an acceptable candidate for JOC.

A.2.2. Establish and create a Project file at the inception of a Project.

A.2.3. Conduct a Joint Scope Meeting with Commission staff, the JOC Contractor, and the architect or engineer, as applicable.

A.2.4. Define and document the Detailed Scope of Work appropriate for the Project work.

A.2.5. Assist with resolving issues when Project plans and actual conditions vary.

A.2.6. Obtain the Commission's approval of the Detailed Scope of Work.

A.2.7. Issue a Request for Proposal to the JOC Contractor.

A.2.8. Prepare an Independent Estimate.

A.2.8.1. For Projects requiring architectural/engineering design services, the construction estimate prepared by the Commission's architect/engineer shall serve as the Independent Estimate.

A.2.8.2. For Projects that do not require architectural/engineering design services, the Independent Estimate shall be prepared by the Consultant.

A.2.9. Review the Proposal submitted by the JOC Contractor.

A.2.10. Direct the JOC Contractor to revise the Proposal, as necessary.

A.2.11. Finalize the Job Order amount with the JOC Contractor.

A.2.12. Review and approve all submissions by the JOC Contractor pertaining to the Job Order, including submittals, shop drawings, permits, etc., except that the approval responsibility of this Section A.2.12 shall not apply to a Project or any portion of a Project that requires architectural and/or engineering design services.

A.2.13. Obtain the Commission's authorization, approval and budget account information.

A.2.14. Issue the JOC Notice-to-Proceed to the JOC Contractor.

**A.3. JOC Program Construction Management.**

- A.3.1. Establish and maintain open lines of communication with the entire Project team, including the User Agency, its consultants, along with the Commission's consultants throughout the duration of the Services.
- A.3.2. Coordinate any public relations (groundbreaking) ceremonies with the Commission staff, the JOC Contractor and other appropriate parties.
- A.3.3. Assist in the coordination of the JOC Contractor obtaining the necessary permits. Coordinate the inspection for permits and licenses between appropriate parties. Assist the JOC Contractor as needed to expedite approvals for permits and licenses. Coordinate payment of fees and resolution of open issues between the JOC Contractor and federal, state and local agencies for such permits and licenses.
- A.3.4. Assemble all required permits, licenses, and certificates received from the JOC Contractor and arrange delivery of such documents to the Commission.
- A.3.5. Develop a specific Quality Assurance (QA) plan for the JOC Program for implementation. Maintain the QA plan throughout the duration of the JOC Program.
- A.3.6. Attend all meetings and conferences as directed by the Commission's Representative, including: pre-bid and pre-construction meetings with the JOC Contractor. Conduct a periodic progress meeting (at least once per week) with the Commission, User Agency and the appropriate design team members and contractors. Coordinate pre-construction conferences, prior to the commencement of construction activities, as required. Review the Project schedule, submittals, scope changes, requests for information, outstanding bulletins, pending issues and field problems. Prepare meeting and conference minutes and distribute to all parties in attendance within five business days.
- A.3.7. Establish and maintain, available to the Commission, a complete library of all Contract Documents, addenda, bulletins, scope changes, approved shop drawings and material samples.
- A.3.8. Monitor and inspect the JOC Contractor's work in-progress. Conduct site observations of the JOC Contractor's work to ensure that the Project is progressing on schedule and in accordance with the requirements of the Contract Documents.
- A.3.9. Complete an inspection report for each site visit.
- A.3.10. Provide weekly construction status reports to the Commission.
- A.3.11. Prepare a monthly report containing the following:
  - A.3.11.1. Executive Summary - include a summary of financial status, highlights of major events and a schedule summary.
  - A.3.11.2. Status of Construction - summarize JOC Program construction activities, including current anticipated start and completion dates by Project elements.
  - A.3.11.3. Outstanding Items - include items to be completed by the Consultant, the design team members, the Commission, User and JOC Contractor.

- A.3.11.4. Purchasing Activity - detail current status of materials procurement based upon information received from the JOC Contractor.
- A.3.11.5. Budget Status Report - include a summary of anticipated costs and status of scope changes that are approved, pending, and/or anticipated.
- A.3.11.6. Schedules - include construction schedule indicating current Project status (both in CPM and summary bar chart form), updated cash flow and a look-ahead plan for the following period.
- A.3.11.7. Progress Photographs - incorporate progress photographs on each project provided by the JOC Contractor.
- A.3.11.8. Anticipated JOC Program Activity - indicate, in narrative form, the activities of the Program in the upcoming month, actions to be taken during that period, open issues, and any scheduled governing agency reviews/ approvals, etc.
- A.3.11.9. Other - include such additional or revised information as shall be required by the Commission.
- A.3.12. Coordinate all aspects of the work between the JOC Contractor and any public or quasi-public agencies or utility companies.
- A.3.13. Review all scope changes proposed by the Commission, the User Agency, and/or design team and make recommendations regarding practicality, costs, effect on completion schedule and risk to the Project.
- A.3.14. Monitor implementation of all scope changes during construction to ensure compliance with approved revisions.
- A.3.15. Conduct project progress meetings with all JOC Contractors on a periodic basis.
- A.3.16. Analyze and monitor requests for change orders required by field conditions and other unforeseen conditions and submit such requests to the Commission for approval prior to instituting any changes to the requirements of the Contract Documents. Process any Change Order requests in accordance with the Contract Documents .
- A.3.17. Review and approve, or direct necessary revisions to, the JOC Contractor's applications for payment.
- A.3.18. Create and maintain a Project closeout log to track all closeout items and requirements.
- A.3.19. Conduct a comprehensive final inspection of each Project to verify that the materials furnished and work performed are in accordance with the Contract Documents.
- A.3.20. Enter all Job Order related information into the PROGEN<sup>®</sup> software.
- A.3.21. Obtain final acceptance of the work from the Commission.

**A.4. Additional Services**

A.4.1. Provide such additional Services as required by the Commission.

**SCHEDULE B  
PROJECT DOCUMENTS**

**JOC Program: Job Order Contracting Consulting Services**

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[Any Project Documents as may be available to the Commission will be provided to the Consultant upon issuance of the Notice to Proceed for the applicable Project]

**SCHEDULE C  
COMPENSATION OF CONSULTANT**

**JOC Program: Job Order Contracting Consulting Services**

**C.1. Consultant's Fee.**

C.1.1. The Commission shall pay the Consultant for providing the Consulting Services to Develop, Implement and Support JOC Program and Project Management Services to Develop Job Orders specified in Schedule A-1 and A-2. The Commission shall pay the Consultant the following fee:

- Eleven Percent (11%) of the value of the Job Orders issued with the JOC Program up to and including Six Million Dollars (\$6,000,000) in construction value.
- Eight Percent (8%) of the value of Job Orders issued with the JOC Program in excess of Six Million Dollars (\$6,000,000) in construction value.

C.1.2. The Commission shall pay the Consultant for providing the Construction Management Services as specified in Schedule A-3. The Commission shall pay the Consultant Three Percent (3%) of the value of the Job Orders completed for Construction Management Services.

C.1.3. The Commission shall pay the Consultant for Reimbursable Expenses related to obtaining Site Data, Tests and Reports prepared by a third party, as requested by the Commission, in an amount equal to Consultant's actual cost plus ten percent (10%).

**C.2. METHOD OF PAYMENT**

C.3.1 **Invoices.** Once each month, Consultant will submit to the Commission an invoice for Services performed during the preceding month. Each invoice shall include a list of all Job Orders issued during the month and a list of all Job Orders completed during the month. In accordance with the terms of the Agreement, Consultant must maintain complete documentation of all costs incurred for review and audit by the Commission or its designated audit representative(s). Each invoice must be submitted in the format directed by the Commission. Invoices must be accompanied by a progress report in a format acceptable to the Commission.

C.3.2 **Payment.** Payment will be processed within 30 days after the Commission's approval of an acceptable invoice. The Commission will make a reasonable effort to review and approve for payment, or inform Consultant of non-approval of, all invoices submitted by Consultant.

C.3.3 **Invoice Disputes.** If the Commission disputes certain items in Consultant's invoices, the amount not disputed will be paid in full. The amount in question must be resolved in accordance with the Disputes provisions of this Agreement.

**SCHEDULE D  
INSURANCE REQUIREMENTS**

**JOC Program: Job Order Contracting Consulting Services**

The Consultant must provide and maintain at its own expense, and cause any subcontractor to provide and maintain at its expense, until expiration of the Agreement and during the time period following expiration if required to return and perform any additional work, the minimum insurance coverages and requirements specified below, insuring all operations related to the Agreement.

**D.1. INSURANCE TO BE PROVIDED**

**D.1.1. Workers' Compensation and Employers Liability**

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under the Agreement and Employers Liability coverage with limits of not less than \$500,000 for each accident or illness.

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

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission and the specific User Agency must be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

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

**D.1.3. Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Consultant must provide Automobile Liability Insurance, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The Public Building Commission of Chicago and the specific User Agency must be named as additional insureds on a primary, non-contributory basis.

**D.1.4. Professional Liability**

When Consultant performs work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the start of work on the Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of 2 years.

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

**D.1.5 Property**

The Consultant is responsible for all loss or damage to Commission and/or User Agency's property at full replacement cost. The Consultant is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools, and supplies) owned, rented, or used by Consultant.

### **D.1.6 Valuable Papers**

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

### **D.2. ADDITIONAL REQUIREMENTS**

D.2.1. The Consultant must furnish the Public Building Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Consultant must submit evidence of insurance to the Commission before award of Agreement. The receipt of any certificate does not constitute agreement by the Commission that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Commission to obtain certificates or other insurance evidence from Consultant is not a waiver by the Commission of any requirements for the Consultant to obtain and maintain the specified coverages. The Consultant will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Consultant of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

D.2.2. The Commission reserves the right to obtain copies of insurance policies and records from the Consultant and/or its subcontractors at any time upon written request.

D.2.3. The insurance must provide for 60 days prior written notice to be given to the Commission if coverage is substantially changed, canceled, or non-renewed.

D.2.4. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Consultant.

D.2.5. The Consultant agrees that insurers waive their rights of subrogation against the Commission and User Agency, their respective Board members, employees, elected and appointed officials, and representatives.

D.2.6. The coverages and limits furnished by Consultant in no way limit the Consultant's liabilities and responsibilities specified within the Agreement or by law.

D.2.7. Any insurance or self-insurance programs maintained by the Commission and User Agency do not contribute with insurance provided by the Consultant under the Agreement.

D.2.8 The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in the Agreement given as a matter of law.

D.2.9 The Consultant must require all its subcontractors to provide the insurance required in this Agreement, or Consultant may provide the coverages for its subcontractors. All its subcontractors are subject to the same insurance requirements of Consultant unless otherwise specified in this Agreement.

D.2.10. If Consultant or its subcontractors desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

### **D.3. RISK MANAGEMENT**

The Commission's Risk Management Department maintains the rights to modify, delete, alter or change these requirements.

**SCHEDULE E  
KEY PERSONNEL**

**JOC Program: Job Order Contracting Consulting Services**

<b>Senior Project Manager</b>	<b>Jonathan R. Van Daveer</b>
<b>JOC Training Specialist</b>	<b>W. Christian Mellon</b>
<b>JOC Training Specialist</b>	<b>Jason L. Whitlock</b>
<b>Project Managers</b>	<b>To be determined</b>
<b>Construction Managers</b>	<b>To be determined</b>

**EXHIBIT A  
DISCLOSURE OF RETAINED PARTIES**

**JOC Program: Job Order Contracting Consulting Services**

**(COMMISSION'S DISCLOSURE OF RETAINED PARTIES FORM  
EXECUTED BY CONSULTANT FOLLOWS.)**

## DISCLOSURE OF RETAINED PARTIES

**A. Definitions and Disclosure Requirements**

1. As used herein, "Contractor" means a person or entity who has any contract or lease with the Public Building Commission of Chicago ("Commission").
2. Commission contracts and/or qualification submittals must be accompanied by a disclosure statement providing certain information about attorneys, lobbyists, consultants, subcontractors, and other persons whom the Contractor has retained or expects to retain with respect to the contract or lease. In particular, the Contractor must disclose the name of each such person, his or her business address, the name of the relationship, and the amount of fees paid or estimated to be paid. The Contractor is not required to disclose employees who are paid solely through the Contractor's regular payroll.
3. "Lobbyists" means any person (a) who for compensation or on behalf of any person other than himself undertake to influence any legislative or administrative action, or (b) any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

**B. Certification**

Contractor hereby certifies as follows:

1. This Disclosure relates to the following transaction: Contract No. PS1007  
 Description of goods or services to be provided under Contract: Job Order Contracting Consulting Services
2. Name of Contractor: The Gordian Group, Inc.
3. EACH AND EVERY attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages if necessary. NOTE: You must include information about certified MBE/WBEs you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.

**Retained Parties:**

Name	Business Address	Relationship (Attorney, Lobbyist, Subcontractor, etc.)	Fees (indicate whether paid or estimated)

Check Here If No Such Persons Have been Retained or Are Anticipated To Be Retained:  X

## DISCLOSURE OF RETAINED PARTIES

4. The Contractor understands and agrees as follows:
- a. The information provided herein is a material inducement to the Commission execution of the contract or other action with respect to which this Disclosure of Retained Parties form is being executed, and the Commission may rely on the information provided herein. Furthermore, if the Commission determines that any information provided herein is false, incomplete, or inaccurate, the Commission may terminate the contract or other transaction, terminate the Contractor's participation in the contract or other transactions with the Commission.
  - b. If the Contractor is uncertain whether a disclosure is required, the Contractor must either ask the Commission's Representative or his or her manager whether disclosure is required or make the disclosure.
  - c. This Disclosure of Retained Parties form, some or all of the information provided herein, and any attachments may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. The Contractor waives and releases any possible rights or claims it may have against the Commission in connection with the public release of information contained in the completed Disclosure of Retained Parties form and any attachments.

Under penalty of perjury, I certify that I am authorized to execute this Disclosure of Retained Parties on behalf of the Contractor and that the information disclosed herein is true and complete.

David L. Mahler  
Signature

January 2, 2007  
Date

David L. Mahler  
Name ( Type or Print)

Secretary  
Title

Subscribed and sworn to before me

this 2<sup>nd</sup> day of January 2007

Monica R. Spurrer  
Notary Public

My Commission Expires  
April 1, 2014

**EXHIBIT B  
DISCLOSURE AFFIDAVIT**

**JOC Program: Job Order Contracting Consulting Services**

**(COMMISSION'S DISCLOSURE AFFIDAVIT FORM  
EXECUTED BY CONSULTANT FOLLOWS.)**

Date: January 2, 2007

**DISCLOSURE AFFIDAVIT**

Name: The Gordian Group, Inc.

Address: 140 Bridges Road, Suite E, Mauldin, SC 29662

Telephone No.: (800) 874-2291

Federal Employer I.D. #: 58-1900371 Social Security #: \_\_\_\_\_

Nature of Transaction:

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

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

The undersigned David L. Mahler, as Secretary  
(Name) (Title)

and on behalf of The Gordian Group, Inc.  
("Bidder/ Proposer" or "Contractor") having been duly sworn under oath certifies that:

**I. DISCLOSURE OF OWNERSHIP INTERESTS**

Pursuant to Resolution No. 5371 of the Board of Commissioners of the Public Building Commission of Chicago, all bidders/proposers shall provide the following information with their bid/proposal. If the question is not applicable, answer "NA". If the answer is none, please answer "none".

- |                                  |   |   |
|----------------------------------|---|---|
| Bidder/Proposer/Contractor is a: | <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> LLC                        |
|                                  | <input type="checkbox"/> Partnership            | <input type="checkbox"/> LLP                        |
|                                  | <input type="checkbox"/> Joint Venture          | <input type="checkbox"/> Not-for-Profit Corporation |
|                                  | <input type="checkbox"/> Sole Proprietorship    | <input type="checkbox"/> Other                      |

**SECTION 1.**

**FOR PROFIT CORPORATION OR LIMITED LIABILITY COMPANY (LLC)**

a. State of Incorporation or organization Georgia

b. Authorized to do business in the State of Illinois: Yes [x] No [ ]

c. Names of all officers of corporation or LLC (or attach list): Names of all directors of corporation (or attach list):

Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
<u>See attached list.</u>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

d. If the corporation has fewer than 100 shareholders indicate here or attach a list of names and addresses of all shareholders and the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
<u>The Gordian Group, Inc.</u>	<u>140 Bridges Road, Suite E</u>	<u>100 %</u>
<u>Employee Stock Ownership Plan</u>	<u>Mauldin, SC 29662</u>	<u>_____ %</u>
_____	_____	<u>_____ %</u>
_____	_____	<u>_____ %</u>

e. If the corporation has 100 or more shareholders, indicate here or attach a list of names and addresses of all shareholders owning shares equal to or in excess of seven and one-half percent (7.5%) of the proportionate ownership of the corporation and indicate the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
<u>N/A</u>	_____	<u>_____ %</u>
_____	_____	<u>_____ %</u>
_____	_____	<u>_____ %</u>

f. For LLC's, state whether member-managed or identify managing member:

N/A

**The Gordian Group, Inc.  
Officer & Directors List  
Effective December November 10, 2006**

<b><u>Name/Title</u></b>	<b><u>Residence Address</u></b>	<b><u>Business Address</u></b>
Harry H. Mellon CEO/Director	930 Tahoe Blvd., Unit 226 Incline Village, NV 89541	140 Bridges Road, Suite E Mauldin, SC 29662
Robert D. Coffey President	9 Avens Hill Drive Greer, SC 29651	140 Bridges Road, Suite E Mauldin, SC 29662
David L. Mahler Secretary/Director	113 Clairewood Ct. Greenville, SC 29615	140 Bridges Road, Suite E Mauldin, SC 29662
Edward A. Snow Treasurer/Director	205 Sun Meadow Road Greer, SC 29650	140 Bridges Road, Suite E Mauldin, SC 29662
Paul R. Schreyer General Counsel/Director	2 Miller Road Darien, CT 06820	140 Bridges Road, Suite E Mauldin, SC 29662

g. For LLC's identify each member:

Name (Print or Type)	Address	Ownership Interest
N/A		_____%
_____	_____	_____%
_____	_____	_____%

h. Is the corporation or LLC owned partially or completely by one or more other corporations or legal entities?

Yes  No

If "yes" provide the above information, as applicable, for each such corporation or entity.  
 100% owned by The Gordian Group, Inc. Employee Stock Ownership Plan,  
 a qualified retirement plan.

**SECTION 2. PARTNERSHIPS**

a. If the bidder/proposer or Contractor is a partnership, indicate the name of each partner and the percentage of interest of each therein. Also indicate, if applicable, whether general partner (GP) or limited partner (LP)

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

**SECTION 3. SOLE PROPRIETORSHIP**

a. The bidder/proposer or Contractor is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes  No  N/A  
 If NO, complete items b. and c. of this Section 3.

b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

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

N/A
_____
_____
_____

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

Name(s)

Address(es)

N/A	

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

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

Name(s)

Address(es)

N/A	

**SECTION 5. NOT-FOR-PROFIT CORPORATIONS**

a. State of incorporation   N/A  

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

Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
N/A			

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

## II. CONTRACTOR CERTIFICATION

### A. CONTRACTOR

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

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
- d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

## B. SUBCONTRACTOR

1. The Contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.
2. The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such subcontractors to certify as to Section II(A)(5). In the event any subcontractor is unable to certify to Section II(A)(5), such subcontractor shall attach an explanation to the certification.
3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section II(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Public Building Commission of Chicago upon request.
4. The Contractor will not, without the prior written consent of the Public Building Commission of Chicago, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.

5. The Contractor hereby agrees, if the Public Building Commission of Chicago so demands, to terminate its subcontractor with any subcontract if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontract as required by this certification.

#### C. STATE TAX DELINQUENCIES

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

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If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

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

#### D. OTHER TAXES/FEEES

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

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If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

#### E. ANTI-COLLUSION

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free

competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of a bid will make the bid non-responsive and not eligible for award consideration.

#### **F. PUNISHMENT**

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

#### **G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

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

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If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

#### **III. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE**

- A. Neither the Contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction<sup>5</sup>, (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or other Environmental Restriction.

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

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

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

- B. Without the prior written consent of the Public Building Commission of Chicago, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such

subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.

- C. Until completion of the Contract's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

#### IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE

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

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

**Check one:**

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

#### V. INCORPORATION INTO CONTRACT AND COMPLIANCE

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Public Building

Commission of Chicago's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

#### VI. VERIFICATION

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

The Contractor must report any change in any of the facts stated in this Affidavit to the Public Building Commission of Chicago within 14 days of the effective date of such change by completing and submitting a new Disclosure Affidavit. Failure to comply with this requirement is grounds for your firm to be deemed non-qualified to do business with the PBCC. Deliver any such new Disclosure Affidavit to: Public Building Commission of Chicago, Director of Procurement, 50 W. Washington, Room 200, Chicago, IL 60602.

David L. Mahler

Signature of Authorized Officer

David L. Mahler

Name of Authorized Officer (Print or Type)

Secretary

Title

(800) 874-2291

Telephone Number

State of South Carolina

County of Greenville

Signed and sworn to before me on this 2nd day of January, 2007 by

David L. Mahler (Name) as Secretary (Title) of

The Gordian Group, Inc. (Bidder/Proposer or Contractor)

Mark R. Brewer

Notary Public Signature and Seal

My Commission Expires  
April 1, 2014

## Notes 1-5 Disclosure Affidavit

1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.
2. For purposes of Section II (A) (2) of this certification, a person commits the offense of and engages in bid-rigging when he knowingly agrees with any person who is, or but for such agreement should be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent non-collusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted. see 720 ILCS 5/33-E-3.
3. No corporation shall be barred from contracting with any unit of state or local government as a result of a conviction, under either Section 33E-3 or Section 33E-4 of Article 33 of the State of Illinois Criminal Code of 1961, as amended, of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of the State of Illinois Criminal Code.
4. For purposes of Section II(A) of this certification, a person commits the offense of and engages in bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes hereof, shall include at least three contract bids within a period of ten years, the most recent of which occurs after January 1, 1989) of submitting sealed bids to units of state or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. See 720 ILCS 5/33E-4.
5. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants including but not limited to (1) Section 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapter 7-28 or 11-4 of the Municipal Code of Chicago; (2) Comprehensive Environment Response and Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) the Hazardous Material Transportation Act (49 U.S.C. § 1801 *et seq.*); (4) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 7401 *et seq.*); (5) the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (6) the Clean Air Act (42 U.S.C. § 7401 *et seq.*); (7) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*); (8) the Safe Drinking Water Act (42 U.S.C. § 300f); (9) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 *et seq.*); (10) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

**EXHIBIT C  
POLICIES CONCERNING MBE AND WBE**

**JOC Program: Job Order Contracting Consulting Services**

**(COMMISSION'S RESOLUTION CONCERNING PARTICIPATION  
OF  
MINORITY BUSINESS ENTERPRISES  
AND  
WOMEN BUSINESS ENTERPRISES  
DATED  
OCTOBER 1, 2004**

**FOLLOWS THIS PAGE)**

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**MINUTES OF THE ANNUAL MEETING OF THE**  
**BOARD OF COMMISSIONERS HELD ON OCTOBER 1, 2004**

The annual meeting of the Board of Commissioners of the Public Building Commission of Chicago was held at the Board Meeting Room, 2nd Floor, Richard J. Daley Center on October 1, 2004 at 8:30 A.M.

The following Commissioners were present:

Richard M. Daley, Chairman  
Arthur M. Brazier  
Adela Cepeda  
Robert B. Donaldson  
María N. Saldaña  
Cynthia M. Santos  
Samuel Wm. Sax  
Michael W. Scott  
John H. Stroger, Jr.  
Theodore R. Tetzlaff  
Don A. Turner

Also present were:

Montel M. Gayles

J. Brankin  
B. Campney  
B. Currie  
M. Fernandez  
G. Fink  
A. Fredd  
J. Gallagher  
A. Garcia-Abner  
C. Giannini  
R. Giderof  
J. Harnening  
P. Hogan  
D. Jackson  
D. Jasinski  
E. Johnson

acknowledged the appointment of the aforesaid commissioners as Chairman and members, respectively, of the Administrative Operations Committee.

The Board of Commissioners was next presented with consideration of approval of the proposed amendment of Special Conditions regarding Remedial Program for Utilization of Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) and Economically Disadvantaged Firms, attached hereto as Exhibit "C", (previously approved February, 1992). After discussion and consideration and upon motion duly made and seconded, the following resolution was adopted:

**RESOLUTION NO. 6741**

BE IT RESOLVED that the Board of Commissioners of the Public Building Commission of Chicago does hereby approve the proposed amendment of Special Conditions regarding Remedial Program for Utilization of Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) and Economically Disadvantaged Firms, substantially in the form attached hereto as Exhibit "C".

**Commissioners voting in the affirmative:**

Richard M. Daley, Arthur M. Brazier, Adela Cepeda,  
Robert B. Donaldson, Maria N. Saldaña, Cynthia M. Santos,  
Samuel Wm. Sax, Michael W. Scott, John H. Stroger,  
Theodore R. Tetzlaff, Don A. Turner - 11

**Commissioners voting in the negative:**

None

Next, the Executive Director presented to the Board of Commissioners for consideration of approval a resolution which provides for the Public Building Commission to appoint to the extent feasible the Architect of Record with responsibility for all phases of design and administration on projects undertaken on behalf of User Agencies. After discussion and consideration and upon motion duly made and seconded, the following resolution was adopted:

**RESOLUTION NO. 6742**

WHEREAS, the Public Building Commission of Chicago (the "Commission") was organized and created pursuant to the Public Building

Special Conditions Regarding Remedial Program for  
Utilization of Minority Business Enterprise ("MBE"),  
Women Business Enterprise ("WBE") and  
Economically Disadvantaged Firms

SECTION 1

INTRODUCTION

**SECTION 1.1** In February 1992 the Board of Commissioners (the "Board") of the Public Building Commission of Chicago (the "Commission") adopted a Remedial Program for Utilization of MBE and WBE firms (the "Program") as a means of providing open access to the award of Commission Contracts and to remedy the effects of racial and sexual discrimination which have placed such firms at a competitive disadvantage in the award of Commission Contracts.

**SECTION 1.2** In 2003, District Judge James B. Moran in the case *Builders Association of Greater Chicago v. City of Chicago*, No. 96 C 1122 (N.D. Ill.) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBE and WBE firms.

**SECTION 1.3** The Commission has a compelling interest in preventing public funds from perpetuating the past and current discrimination against MBE and WBE firms which currently exist in the market.

**SECTION 1.4** The February 1992 Program adopted by the Commission has not been sufficient to ameliorate the effects of racial and gender discrimination in the marketplace.

**SECTION 1.5** The remedies adopted herein by the Commission will not overly burden non-MBE and non-WBE firms in the award of Commission Contracts.

**SECTION 1.6** The Commission will periodically review MBE and WBE participation on contracts awarded by the Commission to insure that the Commission continues to have a compelling interest in remedying discrimination against MBE and WBE firms in the award of Commission Contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.

## SECTION 2

### POLICY STATEMENT

**SECTION 2.1** It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Contractor must agree that it shall not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.

**SECTION 2.2** The Commission shall require the Contractor also agrees to take affirmative action to ensure that MBE and WBE firms shall have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.

## SECTION 3

**SECTION 3.1** For purposes of this Special Condition, the following definitions shall apply:

(a) "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the person or entity. In determining whether persons or entities are affiliates, the Commission shall consider all appropriate factors including common ownership, common management and contractual relationships. Affiliates shall be considered together in determining whether a firm is a Small Business Enterprise.

(b) "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory and provides no commercially useful function other than acting as a conduit between a supplier and a customer.

(c) "Certification" or "Certified" shall mean a person or entity qualified or granted certification as a Minority Business Enterprise (MBE) or Woman Business Entity (WBE) by the City of Chicago.

(d) "Commercially useful function" means responsibility for the execution of a distinct element of the work of the contract which is carried out by actually performing, managing and supervising the work involved or fulfilling responsibilities as a joint venture.

(e) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.

(f) "Contract" means any contract awarded by the Commission which is to be paid from funds belonging to or administered by the Commission regardless of source.

(g) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.

(h) "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.

(i) "Economically disadvantaged" means an individual whose personal net worth is less than \$750,000, indexed annually for the Chicago Metro Area Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January, 1999.

(j) "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.

(k) "Good faith efforts" means actions undertaken by a Contractor to achieve a Contract Specific Goal that by their scope, intensity and appropriations to the objective can reasonably be expected to fulfill the Program's requirements.

(l) "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.

(m) "Local business enterprise" means, for purposes of Certification, a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (the "Six County Region"), which has the majority of its regular, full time work force located within the Six County Region.

(n) "Minority" means:

(i) Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:

(A) African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;

(B) Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and

(ii) Individual members of other groups, including but not limited to Asian-Americans, Arab-Americans and Native-Americans, found by the Commission to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Commission.

(n) "Minority-owned business enterprise" or "MBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged minority persons whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.

(o) "Owned" means having all of the customary incidents of ownership, including the right of disposition and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.

(p) "Personal net worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE or the individual's equity in his or her primary place of residence. As to

assets held jointly with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(K) accounts or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

(q) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.

(r) "Small business enterprise" means a small business as defined by the U.S. Small Business Administration pursuant to the business size standards found in 13 C.F.R Part 121 relevant to the scope(s) of work the firm seeks to perform on Commission contracts. A firm is not an eligible small business enterprise in any fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 C.F.R Part 121.

(s) "Small local business enterprise" means a business that is a small business enterprise and a local business enterprise.

(t) "Woman" means a person of the female gender, who is presumed to be socially disadvantaged.

(u) "Women-owned business enterprise" or "WBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged women or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

#### SECTION 4

##### ASPIRATIONAL AND CONTRACT SPECIFIC GOALS

SECTION 4.1 Upon the effective date of these Special Conditions, the bi-annual aspirational goals shall be to award 24 percent of the annual dollar value of all Commission Construction Contracts to certified MBEs and 4 percent of the annual dollar value of all Commission Contracts to qualified WBEs and 25 percent of the annual dollar value of all other Commission Contracts to certified MBEs and 5 percent of the annual dollar value of the all other Commission Contracts to certified WBEs.

The Commission shall establish subsequent bi-annual aspirational goals for the award of Commission Contracts based on the best available evidence. Quotas are hereby prohibited.

**SECTION 4.2** As one method to achieve the aspirational goals, the Executive Director is authorized to establish contract specific goals for MBE and WBE participation for each contract let through competitive bidding. Contract specific goals shall be based on normal industry practice, as determined in consultation with other governmental agencies, the scope of work of the contract, the availability of at least three MBEs and three WBEs to perform the functions of those individual contracts, and the Commission's progress to date towards meeting the bi-annual, aspirational goals of Section 4.1. The Executive Director shall implement administrative procedures to establish contract-specific goals.

**SECTION 4.3** Each Bidder's commitment to utilization of certified MBE and WBE firms shall be considered as further evidence of the responsibility of the Bidder. Further, the Bidder must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value of ten (10%) percent of the initial Contract value or fifty thousand (\$50,000) dollars, whichever is less.

**SECTION 4.4** Failure to carry out the commitments and policies set forth in this Program shall constitute a material breach of contract and may result in termination of the Contractor or such other remedy as the Commission deems appropriate.

## SECTION 5

### RACE AND GENDER-NEUTRAL MEASURES

**SECTION 5.1** The Commission shall develop and use race and gender-neutral measures to facilitate the participation of small business enterprises in Commission Contracts. Race and gender-neutral measures shall be used to the maximum feasible extent to meet the bi-annual aspirational goals established in Section 4.1. These measures may include, but are not limited to:

- (a) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules so as to facilitate the participation of interested contractors and subcontractors;
- (b) Segmenting contracts so as to facilitate the participation of small business enterprises;
- (c) Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing;

- (d) Providing timely informational programs on contracting procedures, bid preparation and specific contracting opportunities;
- (e) Holding pre-bid conferences, where appropriate, to explain the projects and to encourage contractors to use small business enterprises as subcontractors;
- (f) Adopting prompt payment procedures, including requiring by contract that prime contractors pay subcontractors within specified days of receipt of payment from the Commission and where necessary, issuing payments directly to subcontractors in lieu of payments to prime contractors;
- (g) Reviewing bonding, insurance and retainage requirements so as to eliminate unnecessary barriers to and reduce the burdens of contracting with the Commission;
- (h) Expediting payments and advancing payments to cover start-up and mobilization costs, where appropriate;
- (i) Providing information concerning small business loan programs and other programs providing access to capital to small business enterprises;
- (j) Collecting information from all prime contractors on Commission construction contracts detailing the bids received from all subcontractors for Commission construction contracts and the expenditures to subcontractors utilized by prime contractors on Commission construction contracts;
- (k) At the discretion of the Executive Director, letting a representative sample of Commission construction contracts without goals to determine MBE and WBE utilization in the absence of goals;
- (l) Providing a bid preference on construction contracts of 2 percent for firms bidding on prime contracts whose principal place of business is located in the City of Chicago;
- (m) Limiting the self-performance of prime contractors, where appropriate;
- (n) Creating a target market program for bidding on Commission prime construction contracts by small local business enterprises;
- (o) To the extent practicable, awarding contracts requiring the expenditure of funds not exceeding \$5,000 to small local business enterprises; and
- (p) Referring complaints of discrimination against MBEs or WBEs to appropriate authorities, for investigation and resolution.

## SECTION 6

### CONTRACT PROVISION

**SECTION 6.1** Each Commission Contract let through competitive bidding with an estimated value in excess of \$5,000 for which contract specific goals have been established shall contain the following requirements:

- (a) Include with the bid specifications for each competitively bid contract a list of certified MBEs and WBEs that are available to perform the work required by the specifications or otherwise make such a list available to potential contractors.
- (b) A description of this Special Condition and the program including the requirement of an approved compliance plan; the requirements related to achieving the goals and counting MBE or WBE participation towards meeting the goals; if goals are not met, the requirement of documentation of the Contractor's good faith efforts to achieve the goals including the good faith efforts of MBEs and WBEs to achieve the goal for which they do not qualify; and a requirement that the Contractor commit to the expenditure of at least the dollar value of the contract specific goals with one or more MBEs and one or more WBEs or make good faith efforts to do so. This commitment may be met by the contractor's status as a MBE or WBE, a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE's or WBE's participation in such joint venture), subcontracting a portion of the work to one or more MBEs or WBEs, purchasing materials or services for the work from one or more MBEs or WBEs or by any combination of the foregoing;
- (c) A requirement that prime contractors on Commission construction contracts notify MBEs and WBEs utilized on those contracts about opportunities on contracts without affirmative action contracting goals;
- (d) A requirement that where the Contractor cannot achieve the contract specific goals it must document its good faith efforts to do so. In determining whether the contractor has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Contractor's efforts to do the following:
  - (i) Soliciting through reasonable and available means the interest of MBEs or WBEs that have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the MBEs or WBEs to respond. The contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.

(ii) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.

(iii) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a contractor's failure to meet the goals, as long as such costs are reasonable.

(iv) Not rejecting MBEs or WBEs as being unqualified without sound reasons based on the thorough investigation of their capabilities. The MBEs' or WBEs' standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the goals.

(v) Making a portion of the work available to MBE or WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.

(vi) Making good faith efforts despite the ability or desire of a Contractor to perform the work of a contract with its own organization. A Contractor that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.

(vii) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation even when the Contractor might otherwise prefer to perform these work items with its own forces.

(viii) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Contractor.

(ix) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and

- (x) Effectively using the services of the Commission; minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- (e) Provide a procedure whereby the Contractor may protest the determination that it did not make good faith efforts.
- (f) Negotiate with any Contractor whose contract is in excess of \$25,000 in value and is not awarded by competitive bidding a commitment, where practicable, to meet at least the aspirational goals as percentages of the dollar value of the contract.
- (g) Include MBEs and WBEs on solicitation mailing lists and encourage that they be solicited for suitable contracts.
- (h) Publicize the Program through appropriate means, in order to attract qualified MBEs and WBEs.

**SECTION 6.2** To achieve the contract specific goals, the Executive Director shall undertake, in addition to the other measures provided herein, the following:

- (a) Include uniform provisions permitting the termination of the contract by the Commission upon the disqualification of the Contractor as a MBE or WBE if the contractor's status as MBE or WBE was a factor in the award of the contract and such status was misrepresented by the Contractor;
- (b) Include uniform provisions permitting termination of the contract by the Commission upon the disqualification of any MBE or WBE if the subcontractor's or supplier's status as a MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the contractor. In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and make good faith efforts to engage a qualified MBE or WBE replacement;
- (c) Include uniform provisions allowing the Executive Director access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by the Commission for any purpose;

(d) Review each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by ten percent of the initial contract value or \$50,000.00, whichever is less, for opportunities to increase participation of MBEs or WBEs. Where the proposed contract modification involves work which can be performed by MBEs or WBEs already performing work on the contract such MBEs and WBEs shall participate in such work specified in the contract modification;

(e) Insert in each contract containing a commitment to MBE and/or WBE participation:

(i) A requirement of periodic reporting by the Contractor to the Executive Director on all expenditures made to achieve compliance with the foregoing provisions. Such reports shall include the name and business address of each subcontractor and supplier actually involved in the contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as may assist the Executive Director in determining the Contractor's compliance with the foregoing provisions;

(ii) A requirement that the Contractor cannot make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of this section and a breach of the contract with the Commission, and may cause termination of the contract for breach, and/or subject the Contractor to contract remedies or other sanctions. The facts supporting the request must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract.

(f) Substitutions of the subcontractor shall be permitted only on the following bases:

(i) Unavailability after receipt of reasonable notice to proceed;

(ii) Failure of performance;

(iii) Financial incapacity;

(iv) Refusal by the subcontractor to honor the bid or proposal price or scope;

(v) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;

- (vi) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- (vii) The subcontractor's withdrawal of its bid or proposal; or
- (viii) Decertification of the subcontractor as MBE or WBE.

Where the Contractor has established the basis for the substitution to the satisfaction of the Executive Director, it must make good faith efforts to substitute with a MBE or WBE subcontractor. If the MBE or WBE contract specific goal cannot be reached and good faith efforts have been made, the Contractor may substitute with a non-MBE or non-WBE. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed within the compliance plan the Contractor must obtain the approval of the Executive Director to modify the compliance plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

## SECTION 7

### DETERMINING MBE/WBE UTILIZATION

**SECTION 7.1** The methodology for determining MBE and WBE utilization shall be determined for purposes of analysis with respect to this contract as follows:

- (a) The total dollar value of the contract awarded to the certified MBE or WBE firm shall be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.
- (b) The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Contractor employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subcontractor shall be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.
- (c) In a firm owned and controlled by both minority males and minority females, if the minority females own and control 51% or more of the business, then the total dollar value of a contract with such firm may be counted toward either MBE participation or WBE participation, but not both. If the minority females, however, own and control less than 51% of the firm, then the firm's participation may be counted only toward MBE utilization.

(d) A Contractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. A joint venture seeking to be credited for MBE participation may be formed among certified MBE and WBE firms, or between certified MBE and WBE firms and a non-MBE/WBE firm. A joint venture satisfies the eligibility standards of this Program if the certified MBE or WBE participant of the joint venture:

(i) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and

(ii) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.

(e) A Contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially-useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially-useful function, the Commission shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

(f) Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices, the MBE or WBE shall be rebuttably presumed not to be performing a commercially-useful function.

(g) A Contractor may count toward its goals expenditures to MBE or WBE manufacturers (i.e., suppliers that produce goods from raw materials or substantially alters them before resale).

(h) A Contractor may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially-useful function in the supply process.

## SECTION 8

### SUBMISSION OF BID PROPOSALS

**SECTION 8.1** The following schedules and documents constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Section VII hereof:

(a) Evidence of Certification/Schedule A: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the certifying agency must be submitted. Where the Bidder's MBE/WBE compliance proposal includes any MBE or WBE firm that is not currently certified (as evidenced by a Letter of Certification), "Schedule A: Affidavit of MBE/WBE" executed by the proposed MBE or WBE must be submitted.

(b) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Bidder's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant on any tier, the Bidder must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage. In order to demonstrate the MBE or WBE participant's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement should include specific details related to:

- (i) The contributions of capital and equipment;
- (ii) Work items to be performed by the MBE or WBE firm's own forces;
- (iii) Work items to be performed under the supervision of the MBE or WBE participant; and
- (iv) The commitment of management, supervisory and operational personnel employed by the MBE or WBE to be dedicated to the performance of the contract.

(c) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Bidder for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.

(d) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Section VIII hereof), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least

equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.

**SECTION 8.2** The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Bidder and a MBE/WBE in which the MBE/WBE promises not to provide subcontracting quotations to other Bidders are prohibited.

## **SECTION 9**

### **EVALUATION OF BID PROPOSALS**

**SECTION 9.1** During the period between bid opening and contract award, the submitted documentation will be evaluated by the Commission. The Bidder agrees to provide, upon request, earnest and prompt cooperation to the Executive Director or his designee in submitting to interviews that may be necessary, in allowing entry to places of business, in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE firm in providing such assistance. A bid may be treated as non-responsive by reason of the determination that the Bidder's proposal did not contain a sufficient level of Certified MBE or WBE participation, that the Bidder was unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.

**SECTION 9.2** If the Commission's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Commission shall promptly notify the Bidder of the apparent deficiency and instruct the Bidder to submit (within three (3) business days of such notice given by the Commission) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Commission will be cause for rejection of the Bidder's proposal as nonresponsive.

**SECTION 9.3** Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Commission of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Section 6.2(f) should be followed.

## **SECTION 10**

### **REQUEST FOR WAIVER**

**SECTION 10.1** If a Bidder is unable to identify qualified MBE and WBE firms to perform sufficient work to fulfill the MBE or WBE percentage goals for this Contract, the bid or proposal must include a written request for waiver. A request for waiver shall set forth the Bidder's

inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.

**SECTION 10.2** Examples of such good faith efforts may include, but are not limited to, the following:

- (a) Attendance at the Pre-bid conference;
- (b) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
- (c) Advertisement in trade association newsletters and minority and women-oriented and general circulation media for specific sub-bids;
- (d) Timely notification of specific sub-bids to minority and women contractor assistance agencies and associations;
- (e) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
  - (i) The name, address and telephone number of MBE and WBE firms contacted;
  - (ii) A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
  - (iii) The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
- (f) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving such participation.
- (g) As to each MBE and WBE contacted which the Bidder considers to be not qualified, a detailed statement of the reasons for the Bidder's conclusion.
- (h) Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
- (i) General efforts made to assist MBE and WBE firms to overcome participation barriers.

**SECTION 10.3** The Executive Director, after review and evaluation of the documents provided by the Bidder, may grant a waiver request upon the determination that:

- (a) Sufficient qualified MBE and/or WBE firms capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the Bidder;
- (b) The Bidder is the sole source for work to be performed under the contract; or
- (c) The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

## **SECTION 11**

### **REPORTING AND RECORD-KEEPING REQUIREMENTS**

**SECTION 11.1** The Contractor, within five (5) working days of contract award, shall execute a formal subcontract or purchase order in compliance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and submit to the Commission a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE and WBE firms. During the performance of the contract, the Contractor shall submit partial and final waivers of lien from MBE and WBE subcontractors and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Contractor shall file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE (Sub) Contract Payments" at the time of submitting each monthly payment voucher ("Summary of Estimate"), which reflects the current status of cumulative and projected payments to MBE and WBE firms.

**SECTION 11.2** The Contractor shall maintain records of all relevant data with respect to the utilization of MBE and WBE firms, including without limitation payroll records, tax returns and records, and books of account, and retain such records for a period of at least three (3) years after final acceptance of the work. Full access to such records shall be granted to the Commission and/or its designees, on five (5) business days' notice in order for the Commission to determine the Contractor's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

## SECTION 12

### NON-COMPLIANCE AND LIQUIDATED DAMAGES

**SECTION 12.1** The Executive Director has the authority to apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBE and WBE firms as stated in the Contractor's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole, disqualification from entering into future contracting arrangements with the Commission, and criminal liability. In some cases, monthly progress payments may be withheld until corrective action is taken.

**SECTION 12.2** When the contract is completed, in the event that the Executive Direct has determined that the Contractor did not comply in the fulfillment of the required MBE and/or WBE goals, and a grant of relief of the requirements was not obtained, the Commission will thereby be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. Therefore, in case of such non-compliance, the Commission will deduct as liquidated damages one (1%) percent (or fraction thereof) deficiency toward the MBE goal or WBE goal.

## SECTION 13

### REVIEW AND SUNSET

**SECTION 13.1** These Special Conditions shall be reviewed no later than 5 years from their adoption and shall expire on October 31, 2009 unless the Commission find that its remedial purposes have not been fully achieved and there is a compelling interest in continuing narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the Commission will not function as a passive participant in a discriminatory marketplace.

## SECTION 14

### SEVERABILITY

**SECTION 14.1** In the event that any section, subsection, paragraph, clause, provision or application of these Special Conditions shall be held invalid by any court, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.