

# **PROFESSIONAL SERVICES AGREEMENT**

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**AND**

**COTTER CONSULTING**

**PROJECT DEVELOPMENT SERVICES  
CONTRACT NUMBER PS1994B**



**Mayor Rahm Emanuel  
Chairman**

**Erin Lavin Cabonargi  
Executive Director**

**Public Building Commission  
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**OCTOBER 18, 2013**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN COMMISSION AND CONSULTANT**

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## ARTICLE 1 - AGREEMENT

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

## ARTICLE 2 - GENERAL PROVISIONS

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

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

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

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

2.5 **NOTICES.** All notices required to be given under this Agreement must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Commission or to the Consultant at their respective addresses, as appropriate. If given as provided in this Agreement, such notice is deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Consultant may, from time to time, change the address to which notices will be sent by giving notice to the other party in the manner provided in this subparagraph.

If to the Commission:

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

If to the Consultant:

Anne Edwards-Cotter  
Cotter Consulting, Inc  
100 S. Wacker Dr., Ste. 920  
Chicago, IL 60606

With a copy to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE 3 - DEFINITIONS, USAGE, AND CONVENTIONS

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

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

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

### ARTICLE 4 – PROVISIONS FOR ENGAGEMENT

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

providing Key Personnel performing services of a scope, purpose, and magnitude comparable with the Services to be provided under this Agreement.

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

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

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

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

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

**4.7 ADEQUATE STAFFING.** Intentionally omitted.

**4.8 NONDISCRIMINATION.** In performing under this Agreement the Consultant will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice. The Consultant certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act, 410 ILCS 25/1 et seq; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended. The Consultant will further furnish such reports and information as may be requested by the Commission, the Illinois Department of Human

Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

**4.9 EMPLOYMENT PROCEDURES; PREFERENCES AND COMPLIANCE.** Salaries of employees of the Consultant, performing work under this Agreement, will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. The Consultant certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). The Consultant will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et. seq. If, in the performance of this Agreement, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Consultant, out of payments due to the Consultant, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Agreement and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Consultant to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

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

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

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

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

**4.14 REPRESENTATION AND COVENANT BY CONSULTANT.** Neither the Consultant nor any affiliate of the Consultant is listed on any of the following lists maintained by the Office Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the User Agency or the Commission may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or



entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

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

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

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

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

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

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

5.3 **SUSPENSION BY THE COMMISSION.** The Commission also has the right, at any time and from time to time, with or without cause, to suspend the performance of the Consultant hereunder with respect to all or any part of the Services, by written notice given to the Consultant at least (15) days before the effective date of suspension. During the notice period the Consultant must wind down its Services. So long as the Consultant is not in default under this Agreement on the effective date of the suspension, the Commission will pay the Consultant, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Consultant for periods up to the effective date of suspension.

5.3.1 During the period the Consultant's performance is suspended, the Consultant is not entitled to incur fees or bill the Commission, except for Consultant's time for participating in

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

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

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

**5.5 FORCE MAJEURE.** Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law. If a force majeure occurs, the party delayed or unable to perform will give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Consultant under the Agreement for the duration of the force majeure. The Commission will not be obligated to pay for the Services to the extent and for the duration that performance of the Services is delayed or prevented by force majeure, but, provided the Consultant is not in default of any obligation of the Consultant under the Agreement, the Commission will pay to the Consultant, according to the terms of the Agreement, all compensation and reimbursements due to the Consultant for periods up to the effective date of suspension.

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

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

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

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

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

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

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

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

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

**7.1 PROFESSIONAL INDEMNITY.** For claims alleging professional negligence, the Consultant must defend, indemnify and hold the Commission and the User Agency and their respective commissioners, board members, officers, officials and employees (hereafter the Indemnified Parties) free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, court costs and expert's fees, that may arise out of the Consultant's negligent acts, errors and omissions and misconduct in the Consultant's performance under this agreement or the performance of any Subcontractor retained by the Consultant in connection with this agreement.

**7.1.1 General Indemnity.** For all other claims, the Consultant must protect, defend, indemnify, hold the Commission and the User Agency and their respective commissioners, board members, officers, officials and employees (hereafter the Indemnified Parties) free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, court costs and expert's fees, that may arise out of or be based on any injury to persons or property that is, or is claimed to be, the result of the Consultant's performance under this agreement or any Subcontractor retained by the Consultant in connection with this agreement.

**7.1.2** The indemnification obligations provided in this Article VII will be effective to the maximum extent permitted by law. This indemnity extends to all legal costs, including, without limitation: attorney fees, costs, liens, judgments, settlements, penalties, professional fees or other expenses incurred by the Indemnified Party(ies), including but not limited to reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section will survive the expiration or termination of this Contract. For claims subject to the general indemnity, the Consultant shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractor, agents or servants of the Consultant even though the claimant may allege that the Indemnified Parties were in charge of the Services or allege negligence on the part of the Indemnified Parties. The Indemnified Party/Parties will have the right, at its sole option, to participate in the defense of any such suit, without relieving the Consultant of its obligations hereunder.

**7.1.3** To the extent permissible by law, the Consultant waives any limits to the amount of its obligations to indemnify or contribute to any sums due pursuant to Consultant's

obligations. Notwithstanding the forgoing, nothing in this Article VIII obligates the Consultant to indemnify an Indemnified Party for the Indemnified Party's own negligence or willful misconduct. Defense costs shall be allocated on a comparable fault basis.

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

## **ARTICLE 8 - DEFAULT**

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

8.1.1 The material failure or refusal on the part of the Consultant to perform any obligation or agreement on the part of the Consultant contained in the Agreement, which failure or refusal continues for a period of 10 days (or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such 10-day period) after the date on which written notice of it has been given to the Consultant by the Commission; or

8.1.2 Intentionally Omitted.

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

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

8.1.5 The Consultant's material failure to perform any of its obligations under the Agreement, which failure or refusal continues for a period of 10 days (or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such 10-day period) after the date on which written notice of it has been given to the Consultant by the Commission, including any of the following:

.1 Intentionally Omitted;

.2 Failure to properly perform the Services or inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors; or

.3 Failure to promptly re-perform within a reasonable time the Services that were rejected as erroneous or unsatisfactory per the terms of this Agreement; or

.4 Discontinuance of the Services for reasons within the Consultant's reasonable control; or

.5 Failure to comply with a material term of the Agreement, including the provisions concerning insurance and nondiscrimination.

.6 Any change in ownership or control of the Consultant (as defined in Article XI) without prior written approval of the Executive Director, which approval the Executive Director will not unreasonably withhold.

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

8.1.7 If an Event of Default occurs and continues, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate the Agreement upon ten (10) days written notice to the Consultant, in which event the Commission has no further obligations hereunder or liability to the Consultant except as to payment for Services actually received and accepted by the Commission through the effective date of termination, subject to set off of amounts which the Commission in good faith believes are attributable to the Consultant for failure to properly perform its services in accordance with this Agreement. No courses of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right will operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.

8.2 REMEDIES NOT EXCLUSIVE. No right or remedy in the Agreement conferred upon or reserved to the Commission or the Consultant is exclusive of any right or remedy provided or permitted under this Agreement or by law or equity, but each is cumulative of every other right or remedy given in the Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

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

9.1 GENERAL. All Claims arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including questions concerning compensation, and all claims for alleged breach of contract will be resolved in accordance with the following dispute resolution processes.

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

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

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

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

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

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

**9.6.2** The Arbitrator shall have the authority to order specific performance, including, without limitation, interim injunctive relief prior to the Dispute being resolved. The Arbitrator shall have the authority to decide all issues concerning the fulfillment of any condition precedent to the arbitrability of a claim or defense, the amount of damages to be awarded, if any and the arbitrability of the issues presented. The Arbitrator is not empowered to award damages in excess of compensatory damages, such as punitive damages. Notwithstanding anything to the contrary, the term "Arbitrator" as used herein shall consist of one arbitrator, regardless of the size of the claim or counterclaim. An arbitrator eligible to hear the Dispute shall have at least five years of experience as an arbitrator with the AAA and/or another neutral organization, be familiar with commercial practices, and be a practicing lawyer.

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

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

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

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

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

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

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

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

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

checks must be completed *prior to* the Consultant submitting a Personnel Approval Form to the Commission.

**12.2 The Consultant SHALL:**

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

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

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

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

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

**EXECUTION PAGE FOLLOWS**

**REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK**



Execution Page for Design-Build Agreement between Public Building Commission of Chicago and  
Cotter Consulting with an Effective Date of November 12, 2013

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

PUBLIC BUILDING COMMISSION OF CHICAGO

By: Rahm Emanuel  
Rahm Emanuel, Chairman

By: Erin Lavin Cabonargi  
Erin Lavin Cabonargi, Executive Director

By: Lori Ann Lypson 12/16/13  
Lori Ann Lypson, Secretary

Approved as to Form and Legality:

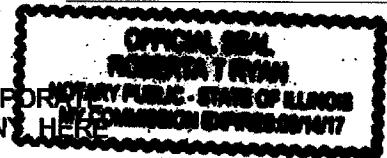
By: Anne G. Freda  
Neal & Leroy, LLC

COTTER CONSULTING

By: Anne Edwards Cotter  
Print Name: Anne Edwards - Cotter  
Title: President

County of Cook  
State of Illinois

AFFIX CORPORATE  
SEAL, IF ANY, HERE



Subscribed and sworn before me by Anne Edwards - Cotter  
as President of Cotter Consulting Inc this 23 day of Oct, 2013.

Robert T. Ryan  
Notary Public

My Commission Expires 8-14-17

## EXHIBIT A – COMPENSATION AND REIMBURSEMENT TERMS

### I. LABOR

The Commission shall compensate the Consultant for Services rendered according to the table of maximum hourly billing rates attached as stated in Exhibit B. The Consultant may invoice the Commission for actual hours worked by each individual up to eight (8) hours per day, forty (40) hours per week per individual. (All exceptions must be approved in writing by the Commission. Exceptions are subject to an absolute limitation that invoices must be for actual hours worked and cannot exceed 176 hours for any individual in any month.) The hourly rates provided herein will constitute full compensation to the Consultant for Services rendered, except for those reimbursable expenses permitted by the Commission as discussed below.

### II. REIMBURSABLE EXPENSES

- (1) "Reimbursable Expenses" as referred to in this Agreement, are actual expenditures at cost without mark-up or surcharge, incurred by the Consultant, and required for the Services. Reimbursable Expenses must be supported with proper documentation in the form of itemized invoices which include a notation stating the Project-related purpose of the expenditure.

The following will be considered Reimbursable Expenses:

- A. The costs of any subconsultant Services that may be necessary during the term, provided that such subconsultant costs are for hourly rates approved by the Commission and reimbursable costs that comply with the terms and conditions of this Agreement.
- B. The costs of supplies and equipment for project field offices, provided that funds have been allocated for such costs in the project budget proposed by the Consultant and approved by the Executive Director.
- C. Intentionally omitted.
- D. Local travel, including taxis and parking including local transportation costs (e.g., cab far and public transportation costs) to and from PBC project sites.

Costs associated with conducting criminal and background checks.

The following are NOT Reimbursable Expenses:

- A. Office and administrative expenses, including personal computers, cellular phones, telephone system expenses, photocopying, duplicating costs, postage, office & drafting supplies, fax and mail/messenger/express courier/delivery services, and office supplies are not Reimbursable Expenses. The Commission shall provide Personnel access to office supplies, copy and duplicating machines, and printers.
- B. Overhead and profit.

### III. METHOD OF PAYMENT

- (1) Invoices. Once each month, the Consultant will submit an invoice to the Commission for Services performed during the preceding month with the exception of Project Close-out

phase services that will be paid in one lump sum after the completion Date of Services. Hourly rates and reimbursable expenses shall be invoiced by each unique Project.

- (2) Each invoice must be supported with such reasonable detail and data as the Commission may require, including detail and data related to Subconsultant costs. In accordance with the terms of the Agreement, the 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. Such progress report must identify any variances from budget or schedule and explain and the reasons for such variances.
- (3) Payment will be processed within 30 days after Commission receives an acceptable invoice from the Consultant.
- (4) Invoice Disputes. If the Commission disputes certain items in the Consultant's invoices, the amount not disputed will be paid in full. The amount in question must be resolved in accordance with the Claim and Disputes provisions of this Agreement.

#### **IV. MAXIMUM COMPENSATION**

The maximum compensation (inclusive of Key Personnel and Reimbursable Expenses) payable to the Consultant for Services performed under this Agreement for the duration of the Term is \$1,000,000.00 unless amended as provided for in Section 4.13 of the Agreement.

### EXHIBIT B – KEY PERSONNEL RATES

The Maximum Hourly Rates and the As Needed Hourly Rates stated herein shall not exceed the amount stated for the Initial Term of this Agreement, as defined in Article 5.1. The Commission shall compensate Consultant the Maximum Hourly Rate for Key Personnel assigned to the Commission for a commitment of (90) days or greater. For any duration of assignment to the Commission less than (90) days, the Commission shall compensate Consultant the As Needed Hourly Rate.

NAME	POSITION	MAXIMUM HOURLY RATE (\$)	AS NEEDED HOURLY RATE (\$)
	Senior Project Manager	140.00	155.00
	Project Manager	120.00	135.00
	Assistant Project Manager	90.00	105.00
	Cost Manager	80.00	95.00
	Contract Administrator	80.00	95.00
	Document Control Administrator	60.00	75.00

**EXHIBIT C \_ PERSONNEL APPROVAL FORM**

**ATTACHED HERETO**



# PERSONNEL APPROVAL FORM

PROJECT DEVELOPMENT SERVICES

Public Building Commission • Richard J. Daley Center • 50 West Washington, Room 200 • Chicago, Illinois 60602 • Tel: 312-744-3680 • Fax: 312-744-3672 • www.pbc.org

Date: \_\_\_\_\_

Firm Name: \_\_\_\_\_  
Personnel's Name: \_\_\_\_\_  
Availability: \_\_\_\_\_  
Hourly Rate: \_\_\_\_\_

Please check the appropriate title and concentration (if applicable) of the requested personnel:

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Sr. Project Manager   | <input type="checkbox"/> Cost Management         | <input type="checkbox"/> Quality Control |
| <input type="checkbox"/> Project Manager       | <input type="checkbox"/> Contract Administration | <input type="checkbox"/> Safety          |
| <input type="checkbox"/> Asst. Project Manager | <input type="checkbox"/> Document Controls       | <input type="checkbox"/> Sustainability  |

Please provide a brief description of the suggested personnel's unique experience qualifying them for the proposed project. Please attach a copy of the suggested personnel's current résumé to this form.

Notes:

\_\_\_\_\_  
Firm Approval

\_\_\_\_\_  
Date

## For PBC Use Only

☐ Approved to Project

☐ Approved to Core

☐ Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**EXHIBIT D - SPECIAL CONDITIONS REGARDING THE UTILIZATION OF MINORITY AND  
WOMEN OWNED BUSINESS ENTERPRISES FOR PROFESSIONAL SERVICES**

**ATTACHED HERETO**

**EXHIBIT D**  
**SPECIAL CONDITIONS REGARDING THE UTILIZATION OF**  
**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES**  
**FOR PROFESSIONAL SERVICES**

**1. Policy Statement**

- a. 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 Consultant must agree that it will 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.
- b. The Commission requires the Consultant also agree to take affirmative action to ensure that MBE and WBE firms have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.
- c. The Commission requires the Consultant to notify MBE and WBE firms, utilized on this contract, about opportunities on contracts without affirmative action goals.

**2. Aspirational Goals**

- a. Upon the effective date of these Special Conditions, the bi-annual aspirational goals are to award 25% of the annual dollar value of all Commission Construction Contracts to MBEs and 5% of the annual dollar value of all Commission Construction Contracts to WBEs.
- b. Further, the Consultant must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value by 10% of the initial Contract value or \$50,000, whichever is less. Where the proposed contract modification involves work which can be performed by MBEs and WBEs already performing work on the contract such MBEs and WBEs will participate in such work specified in the contract modification.
- c. Failure to carry out the commitments and policies set forth in this Program constitute a material breach of contract and may result in termination of the Consultant or such other remedy, as the Commission deems appropriate.

**3. Definitions**

- a. For purposes of this Special Condition, the following definitions applies:
  - i. "Certified Minority Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.
  - ii. "Certified Women's Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.
  - iii. "Professional Service Contract" means a contract for professional services of any type.
  - iv. "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.



- v. "Consultant" means any person or business entity that seeks to enter into a Professional Services Contract with the Commission and includes all partners, affiliates and Joint Ventures of such person or entity.
- vi. "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.
- vii. "Good faith efforts" means actions undertaken by a Consultant to achieve a Contract Specific Goal that by their scope, intensity and appropriateness to the objective can reasonably be expected to fulfill the Program's requirements.
- viii. "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.
- ix. "Program" means the minority- and women-owned business enterprise professional service procurement program established in this special condition.

#### 4. Determining MBE/WBE Utilization

The methodology for determining MBE and WBE utilization will 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 will 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 Consultant employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subconsultant will be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subconsultant may be counted toward only one of the goals, not toward both.
- c. A Consultant 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.
- d. A Consultant 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 will evaluate the amount of work subcontracted, industry practices and other relevant factors.

- e. Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE Consultant 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 will be rebuttably presumed not to be performing a commercially-useful function.
- f. A Consultant 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).
- g. A Consultant may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially useful function in the supply process. Expenditures to suppliers will only be counted if the supplies are sold to the Consultant or subconsultant that installs those supplies in the Work.

#### 5. Submission of Bid Proposals

- a. 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 Article 23.
  - i. Evidence of Certification: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the City of Chicago, Department of Procurement Services or the County of Cook must be submitted.
  - ii. 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, 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.
  - iii. Schedule C: Letter of Intent to Perform as a Subconsultant, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subconsultant) 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.
  - iv. Schedule D: Affidavit of Prime Consultant 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 23.01.10), 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.
- b. 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.

#### 6. Evaluation of Compliance Proposals

- a. During the period between bid opening and contract award, the Bidder's MBE/WBE compliance proposal 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.

- b. If the Commission's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Commission will promptly notify the Bidder of the apparent deficiency and instruct the Bidder to submit (within 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 non-responsive.
- c. 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 subconsultants 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 23.01 should be followed.
- d. If the Compliance Proposal includes participation by material suppliers, the PBC will request copies of the offers from such suppliers. The offers must be furnished to the PBC within three (3) business days of the bidder's receipt of the request for such offers from the PBC. The PBC may make such request by electronic mail. The offers must specify: (i) the particular materials, equipment and/or supplies that will be furnished; (ii) the supplier's price for each of the items; (iii) the total price of the items to be furnished by the supplier, (iv) the supplier's source for the items (e.g., manufacturer, wholesaler) and (v) the subconsultant that the supplies will be purchased by.

#### 7. Request for Waiver

- a. 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 must be sent to the Executive Director and must set forth the Bidder's inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.
- b. Good Faith efforts to achieve participation include but are not limited to:
  - i. Attendance at the Pre-bid conference;
  - ii. 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;
  - iii. Advertisement in trade association newsletters and minority and woman-oriented and general circulation media for specific sub-bids;
  - iv. Timely notification of specific sub-bids to minority and woman Consultant assistance agencies and associations;
  - v. Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
    - a. The name, address and telephone number of MBE and WBE firms contacted;
    - b. A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
    - c. The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
  - vi. 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 sub participation.

- vii. 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.
  - viii. Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
  - ix. General efforts made to assist MBE and WBE firms to overcome participation barriers.
- c. The Executive Director, after review and evaluation of the request provided by the Bidder, may grant a waiver request upon the determination that:
- i. 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;
  - ii. 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.

#### 8. Failure To Achieve Goals

- a. If the Consultant cannot achieve the contract specific goals, as the Project proceeds, it must have documented its good faith efforts to do so. In determining whether the Consultant has made such good faith efforts, the performance of other Consultants in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Consultant's efforts to do the following:
- i. Soliciting through reasonable and available means the interest of MBEs or WBEs that 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.
  - 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 Consultant'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 a 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 cases for rejecting or not soliciting bids to meet the goals.
  - v. Making a portion of the work available to MBE or WBE subconsultants and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subconsultants and suppliers, so as to facilitate meeting the goals.

- vi. Making good faith efforts despite the ability or desire of a Consultant to perform the work of a contract with its own organization. A Consultant 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 Contract might otherwise prefer to perform these 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 Consultant.
  - 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 Consultants' 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.
- b. In the event the Public Building Commission determines that the Consultant did not make a good faith effort to achieve the goals, the Consultant may file a dispute to the Executive Director as provided in Article XI of the Standard Terms and Conditions.

#### 9. Reporting and Record-Keeping Requirements

- a. The Consultant, within 5 working days of contract award, must execute a formal subcontract or purchase order in compliance with the terms of the Consultant'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 Consultant will submit waivers of lien from MBE and WBE subconsultants and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Consultant will 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 Estimate, which reflects the current status of cumulative and projected payments to MBE and WBE firms.
- b. The Consultant must 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 in such detail as the Commission requires, and retain such records for a period of at least 3 years after final acceptance of the work. Full access to such records will be granted to the Commission and/or its designees, on 5 business days' notice in order for the Commission to determine the Consultant's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

#### 10. Disqualification of MBE or WBE

- a. The Contract may be terminated by the Executive Director upon the disqualification of the Consultant as an MBE or WBE if the Consultant's status as an MBE or WBE was a factor in the award and such status was misrepresented by the Consultant.
- b. The Contract may be terminated by the Executive Director upon the disqualification of any MBE or WBE if the Subconsultant's or supplier's status as an MBE or WBE was a factor in the award of the contract and the status of the subconsultant or supplier was misrepresented by the Consultant. If the Consultant is determined not to have been involved in any misrepresentation of the status of the disqualified subconsultant or supplier, the Consultant shall make good faith efforts to engage a qualified MBE or WBE replacement.

## 11. Prohibition On Changes To MBE/WBE Commitments

The Consultant must not make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subconsultants without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant's own forces, is 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 Consultant 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.

## 12. MBE/WBE Substitution Requirements and Procedures

- a. Arbitrary changes by the Consultant of the commitments earlier certified in the **Schedule D** are prohibited. Further, after once entering into each approved MBE and WBE sub-contract agreement, the Consultant shall thereafter neither terminate the subcontract, nor reduce the scope of the work to be performed by the MBE or WBE, nor decrease the price to the MBE or WBE, without in each instance receiving the prior written approval of the Executive Director. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE or WBE requirements. In such cases, the Executive Director must be given reasons justifying the release by the Consultant of prior specific MBE or WBE commitments established in the contract, and will need to review the eligibility of the MBE or WBE presented as a substitute. The substitution procedure will be as follows:

- i. The Consultant must notify the Executive Director immediately in writing of an apparent necessity to reduce or terminate a MBE or WBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the MBE/WBE contract requirements.
- ii. The Consultant's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following reasons: a) Unavailability after receipt of reasonable notice to proceed; b) failure of performance; c) financial incapacity; d) refusal by the subconsultant to honor the bid or proposal price or scope; e) mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed; f) failure of the subconsultant to meet insurance, licensing or bonding requirements; g) the subconsultant's withdrawal of its bid or proposal; or h) decertification of the subconsultant as MBE or WBE.

The Consultant's position must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: replacement firm has been recruited to perform the same work under terms more advantageous to the Consultant; issues about performance by the committed MBE or WBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); an MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

- iii. The Consultant's notification should include the names, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents and Letters of Intent which are required of the proposed MBE or WBE firms.
- iv. The Executive Director will evaluate the submitted documentation, and respond within fifteen (15) working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the Executive Director will instead respond as soon as practicable.

- v. Actual substitution of a replacement MBE or WBE to fulfill contract requirements must not be made before the Executive Director's approval is given of the acceptability of the substitute MBE or WBE. This subcontract must be executed within five (5) working days, and a copy of the MBE WBE subcontract with signatures of both parties to the agreement should be submitted immediately to the Executive Director.
- b. The Executive Director will not approve extra payment for escalated costs incurred by the Consultant when a substitution of subconsultants becomes necessary for the Consultant in order to comply with MBE/WBE contract requirements.
- c. No relief of the MBE/WBE requirements will be granted by the Executive Director except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Consultant to locate specific firms, solicit MBE and WBE bids, seek assistance from technical assistance agencies, and other good faith efforts undertaken to achieve compliance with the MBE/WBE goals.

### 13. Non-Compliance

- a. The Executive Director has the authority to apply suitable sanctions to the Consultant if the Consultant 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 or WBE firms as stated in the Consultant'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. In some cases, monthly progress payments may be withheld until corrective action is taken.
- b. When the contract is completed, if the Executive Director has determined that the Consultant 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 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. In that case, the Commission may disqualify the Consultant from entering into future contracts with the Commission.

### 14. Severability

- a. If any section, subsection, paragraph, clause, provision or application of these Special Conditions is held invalid by any court, the invalidity of such section, paragraph, clause or provision will not affect any of the remaining provisions hereof.

### **SCHEDULE B - Joint Venture Affidavit (1 of 3)**

This form is not required if for a Joint Venture where all parties are certified MBE/WBE firms. In such case, however, a written Joint Venture agreement among the MBE/WBE firms should be submitted. Each MBE/WBE Joint Venturer must also attach a copy of their current certification letter.

1. Name of Joint Venture \_\_\_\_\_

2. Address of Joint Venture \_\_\_\_\_

3. Phone number of Joint Venture \_\_\_\_\_

4. Identify the firms that comprise the Joint Venture

A. Describe the role(s) of the MBE/WBE firm(s) in the Joint Venture. (Note that a "clearly defined portion of work" must here be shown as under the responsibility of the MBE/WBE firm.)

B. Describe very briefly the experience and business qualifications of each non-MBE/WBE Joint Venturer.

5. Nature of Joint Venture's business

6. Provide a copy of the Joint Venture agreement.

7. Ownership: What percentage of the Joint Venture is claimed to be owned by MBE/WBE? \_\_\_\_\_%

8. Specify as to:

A. Profit and loss sharing \_\_\_\_\_%

B. Capital contributions, including equipment \_\_\_\_\_%

C. Other applicable ownership interests, including ownership options or other agreements which restrict ownership or control.

D. Describe any loan agreements between Joint Venturers, and identify the terms thereof.



**SCHEDULE B - Joint Venture Affidavit (2 of 3)**

9. Control of and participation in this Contract: Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

A. Financial decisions: \_\_\_\_\_

B. Management decisions such as:

1. Estimating: \_\_\_\_\_

2. Marketing/Sales: \_\_\_\_\_

C. Hiring and firing of management personnel: \_\_\_\_\_

D. Purchasing of major items or supplies: \_\_\_\_\_

E. Supervision of field operations: \_\_\_\_\_

F. Supervision of office personnel: \_\_\_\_\_

- G. Describe the financial controls of the Joint Venture, e.g., will a separate cost center be established; which venturer will be responsible for keeping the books; how will the expense therefor be reimbursed; the authority of each Joint Venturer to commit or obligate the other. Describe the estimated contract cash flow for each Joint Venturer.

- H. State approximate number of operational personnel, their craft/role and positions, and whether they will be employees of the majority firm or the Joint Venture.

10. Please state any material facts of additional information pertinent to the control and structure of this Joint Venture.

### SCHEDULE B - Joint Venture Affidavit (3 of 3)

THE UNDERSIGNED SWEAR THAT THE FOREGOING STATEMENTS ARE CORRECT AND INCLUDE ALL MATERIAL INFORMATION NECESSARY TO IDENTIFY AND EXPLAIN THE TERMS AND OPERATIONS OF OUR JOINT VENTURE AND THE INTENDED PARTICIPATION BY EACH JOINT VENTURER IN THE UNDERTAKING. FURTHER, THE UNDERSIGNED COVENANT AND AGREE TO PROVIDE TO THE PUBLIC BUILDING COMMISSION OF CHICAGO CURRENT, COMPLETE AND ACCURATE INFORMATION REGARDING ACTUAL JOINT VENTURE WORK AND THE PAYMENT THEREFOR AND ANY PROPOSED CHANGES IN ANY OF THE JOINT VENTURE AGREEMENTS AND TO PERMIT THE AUDIT AND EXAMINATION OF THE BOOKS, RECORDS, AND FILES OF THE JOINT VENTURE, OR THOSE OF EACH JOINT VENTURER RELEVANT TO THE JOINT VENTURE, BY AUTHORIZED REPRESENTATIVES OF THE COMMISSION. ANY MATERIAL MISREPRESENTATION WILL BE GROUNDS FOR TERMINATING ANY CONTRACT WHICH MAY BE AWARDED AND FOR INITIATING ACTION UNDER FEDERAL OR STATE LAWS CONCERNING FALSE STATEMENTS.

Note: If, after filing this Schedule B and before the completion of the Joint Venture's work on this Contract, there is any significant change in the information submitted, the Joint Venture must inform the Public Building Commission of Chicago, either directly or through the Consultant if the Joint Venture is a sub-consultant.

_____ Name of Joint Venturer	_____ Name of Joint Venturer
_____ Signature	_____ Signature
_____ Name	_____ Name
_____ Title	_____ Title
_____ Date	_____ Date
State of _____ County of _____	State of _____ County of _____
On this _____ day of _____, 20____	On this _____ day of _____, 20____
before me appeared (Name)	before me appeared (Name)
_____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by	_____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by
(Name of Joint Venture) to execute the affidavit and did so as his or her free act and deed.	(Name of Joint Venture) to execute the affidavit and did so as his or her free act and deed.
_____ Notary Public	_____ Notary Public
Commission expires: (SEAL)	Commission expires: (SEAL)

**SCHEDULE C - Letter of Intent from MBE/WBE**  
**To Perform As**  
**Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)**

Name of Project: \_\_\_\_\_

Project Number: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of MBE or WBE Firm: \_\_\_\_\_

Check the appropriate box: ☐ MBE or ☐ WBE

TO:

\_\_\_\_\_ and Public Building Commission of Chicago  
Name of Professional Service Provider

The undersigned intends to perform work in connection with the above-referenced project as (check one):

☐ Sole Proprietor

☐ Corporation

☐ Partnership

☐ Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification, dated \_\_\_\_\_. In addition, in the case where the undersigned is a Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project.

The described services or goods are offered for the following price, with terms of payment as stipulated in the Contract Documents.

**SCHEDULE C - Letter of Intent from MBE/WBE**

**To Perform As**

**Subcontractor, Subconsultant, and/or Material Supplier (2 of 2)**

**PARTIAL PAY ITEMS**

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount:

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheet(s).

**SUB-SUBCONTRACTING LEVELS**

\_\_\_\_\_ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.

\_\_\_\_\_ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Exhibit, a zero (0) must be filled in each blank above. If more than 10% percent of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the General Bidder, conditioned upon its execution of a contract with the Public Building Commission of Chicago, and will do so within five (5) working days of receipt of a notice of Contract award from the Commission.

By:

\_\_\_\_\_  
Name of MBE/WBE Firm (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Phone

IF APPLICABLE:

By:

\_\_\_\_\_  
Joint Venture Partner (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Phone

☐ MBE ☐ WBE ☐ Non-MBE/WBE

**SCHEDULE D - Affidavit of Professional Service Provider Regarding MBE/WBE Participation**  
**(1 of 2)**

Name of Project: Project Development Services, Contract Number PS1994B

STATE OF ILLINOIS        }  
                                       } SS  
 COUNTY OF COOK         }

In connection with the above-captioned contract, I HEREBY DECLARE AND AFFIRM that I am the  
 President \_\_\_\_\_ and duly authorized representative of Cotter Consulting, Inc.  
 Title \_\_\_\_\_ Name of Professional Service Provider

whose address is  
100 S Wacker Drive, Suite 920

in the City of Chicago \_\_\_\_\_, State of IL \_\_\_\_\_

and that I have personally reviewed the material and facts submitted with the attached Schedules of MBE/WBE participation in the above-referenced Contract, including Schedule C and Schedule B (if applicable), and the following is a statement of the extent to which MBE/WBE firms will participate in this Contract if awarded to this firm as the Contractor for the Project.

Name of MBE/WBE Consultant	Type of Work to be Done in Accordance with Schedule C	Dollar Credit Toward MBE/WBE Goals	
		MBE	WBE
Cotter Consulting, Inc.	Project Development Services	\$	\$ 100%
		\$	\$
		\$	\$
		\$	\$
		\$	\$
<b>Total Net MBE/WBE Credit</b>		\$	\$ 100%
<b>Percent of Total Base Bid</b>		%	100 %

**SCHEDULE D - Affidavit of Professional Service Provider Regarding MBE/WBE Participation  
(2 of 2)**

The Professional Service Provider may count toward its MBE/WBE goal a portion of the total dollar value of a contract with a Joint Venture equal to the percentage of the ownership and control of the MBE/WBE partner.

**SUB-SUBCONTRACTING LEVELS**

\_\_\_\_\_ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.  
100 % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above.

If more than 10% of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the above-referenced MBE/WBE firms, conditioned upon performance as Professional Service Provider of a Contract with the Commission, and will do so within five (5) business days of receipt of a notice of Contract award from the Commission.

By:

Cotter Consulting, Inc.  
Name of MBE/WBE Firm (Print)

11/14/2013  
Date

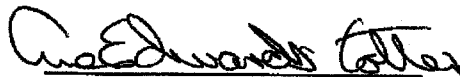
312-327-1302  
Phone

IF APPLICABLE:  
By:

\_\_\_\_\_  
Joint Venture Partner (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

  
Signature

Anne Edwards-Cotter  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

☐ MBE ☐ WBE ☐ Non-MBE/WBE

**EXHIBIT E – INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICE CONTRACTS  
ATTACHED HERETO**

## **EXHIBIT E - PROJECT DEVELOPMENT SERVICES INSURANCE REQUIREMENTS**

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

### **1.0 INSURANCE TO BE PROVIDED:**

#### **1.1 Workers' Compensation and Employers Liability**

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

#### **1.2 Commercial General Liability (Primary and Umbrella)**

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

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

#### **1.3 Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the 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, Board of Education of the City of Chicago, City of Chicago and any other User Agency must be named as Additional Insured on a primary, non-contributory basis.

#### **1.4 Professional Liability**

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

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

#### **1.5 Property**



The Consultant is responsible for all loss or damage to Public Building Commission of Chicago, Board of Education of the City of Chicago, City of Chicago and any other User Agency 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

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

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

### **2.0 ADDITIONAL REQUIREMENTS**

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 any insurance policy has an expiration or renewal date occurring during the term of this Agreement. The Consultant must submit evidence of insurance to the PBC prior to Agreement award. The receipt of any certificate does not constitute agreement by the PBC that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Public Building Commission to obtain certificates or other insurance evidence from Consultant is not a waiver by the PBC of any requirements for the Consultant to obtain and maintain the specified insurance. 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 breach of the Agreement, and the PBC retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

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

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

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

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

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

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

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

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this

Agreement or any limitation placed on the indemnity in the Agreement given as a matter of law.

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

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

Contractor must submit the following at the time of award:

1. Standard ACORD form Certificate of Insurance issued to the Public Building Commission of Chicago as Certificate Holder including:
  - a. All required entities as Additional Insured
  - b. Evidence of waivers of subrogation
  - c. Evidence of primary and non-contributory status
2. All required endorsements including the CG2010 and CG2037

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

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**EXHIBIT F – DISCLOSURE OF RETAINED PARTIES**  
**ATTACHED HERETO**

**EXHIBIT F  
DISCLOSURE OF RETAINED PARTIES**

**Definitions and Disclosure Requirements**

As used herein, "Consultant" means a person or entity who has any contract with the Public Building Commission of Chicago ("Commission").

Commission bids, contracts, and/or qualification submissions must be accompanied by a disclosure statement providing certain information about lobbyists whom the Consultant has retained or expects to retain with respect to the contract. In particular, the Consultant 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 Consultant is not required to disclose employees who are paid solely through the Consultant's regular payroll.

"Lobbyists" means any person who (a) 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.

**Certification**

Consultant hereby certifies as follows:

This Disclosure relates to the following transaction(s):

Professional Services Agreement PS 1994B

Description of goods or services to be provided under Contract:

Project Development Services

Name of Consultant: Cotter Consulting, Inc.

**EACH AND EVERY** lobbyist retained or anticipated to be retained by the Consultant with respect to or in connection with the contract listed below. Attach additional pages if necessary.

**Retained Parties:**

<b>Name</b>	<b>Business Address</b>	<b>Relationship (Attorney, Lobbyist, etc.)</b>	<b>Fees (indicate total whether paid or estimated)</b>

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

The Consultant 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 Consultant's participation in the contract or other transactions with the Commission.
- b. If the Consultant is uncertain whether a disclosure is required, the Consultant 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 Consultant 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 Consultant and that the information disclosed herein is true and complete.

Anne Edwards-Cotter  
Signature

12-5-13  
Date

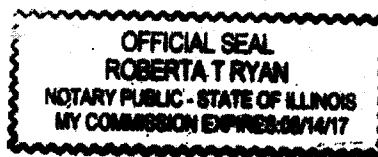
Anne Edwards-Cotter  
Name (Type or Print)

President  
Title

Subscribed and sworn to before me

this 5 day of Dec 2013

Robert T. Ryan  
Notary Public



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**EXHIBIT G - DISCLOSURE AFFIDAVIT**

**ATTACHED HERETO**

**EXHIBIT G  
DISCLOSURE AFFIDAVIT**

Any firm proposing to conduct any business 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 Anne Edwards-Cotter, as President  
Name Title

and on behalf of Cotter Consulting, Inc.

("Bidder/Proposer/Respondent or Contractor") having been duly sworn under oath certifies the following:

1. Name of Firm: Cotter Consulting, Inc.
2. Address: 100 S. Wacker Drive, Suite 920, Chicago, IL 60606
3. Telephone: 312-696-1200 Fax: \_\_\_\_\_
4. FEIN: 36-373587 SSN: \_\_\_\_\_

5. Nature of transaction (check the appropriate box):

- ☐ Sale or purchase of land  
☐ Construction Contract  
☒ Professional Services Agreement  
☐ Other \_\_\_\_\_

6. 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".

- ☒ Corporation  
☐ Partnership  
☐ Sole Proprietorship  
☐ Joint Venture

- ☐ Limited Liability Company  
☐ Limited Liability Partnership  
☐ Not-for-profit Corporation  
☐ Other: \_\_\_\_\_

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### **CORPORATIONS AND LLC'S**

1. State of Incorporation or organization: Illinois
2. Authorized to conduct business in the State of Illinois: ☒ Yes ☐ No
3. Identify the names of all officers and directors of the business entity (attach list if necessary).

Name	Title
Anne Edwards-Cotter	President
Joseph Hoerner	Chief Operating Officer
Brian Herold	Chief Financial Officer

4. Identify all shareholders whose ownership percentage exceeds 7.5% of the business entity (attach list if necessary).

Name	Address	Ownership Interest Percentage
Anne Edwards-Cotter	100 S Wacker Drive, Suite 920,	96.625%
	Chicago, IL 60660	

5. LLC's ONLY, indicate management type and name:

- ☐ Member-managed  
☐ Manager-managed

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

6. 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 such that any person with a beneficial ownership interest of 7.5% or more in the corporation contracting in the PBC is disclosed. For example, if Corporation B owns 15% of Corporation A, and Corporation A is contracting with the PBC, then Corporation B must complete a Disclosure Affidavit. If Corporation B is owned by Corporations C and D, each of which owns 50% of Corporation B, then both Corporations C and D must complete Disclosure Affidavits.

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### **PARTNERSHIPS**

1. 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	Ownership Interest Percentage

### **SOLE PROPRIETORSHIP**

1. The bidder/proposer or Contractor is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: ☐ Yes ☐ No

If the answer to the previous question is no, complete items 2 and 3 of this section.

2. 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)

3. 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	Address

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## **CONTRACTOR CERTIFICATION**

### **A. CONTRACTORS**

1. The Contractor, or any affiliated entities of the Contractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, 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:
  - a. Bribe 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 Submission 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 judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; 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. SUBCONTRACTORS

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, disclosures substantially in the form of Section 1, and certifications substantially in the form of Section 2, of this Disclosure Affidavit. Based on such disclosures and 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 described as prohibited in this document; (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 2 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 described as prohibited in this document of 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 as prohibited in this document 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 all necessary items. In the event any subcontractor is unable to certify to a particular item, 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 this document 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 subcontract 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, the Contractor shall explain below. Attach additional pages 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.

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 pages if necessary).

NA

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. PUNISHMENT**

1. 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).

**F. 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.

NA

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.

#### **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>s</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 the above paragraph, identify any exceptions (attach additional pages if necessary):

NA

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.

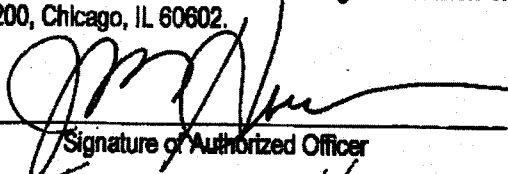
#### **INCORPORATION INTO CONTRACT AND COMPLIANCE**

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.

## VERIFICATION

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

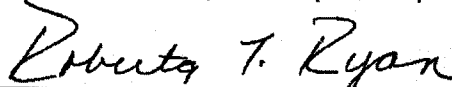
The Contractor must report any change in any of the facts stated in this Affidavit to the Public Building Commission of Chicago within 14 days of the effective date of such change by completing and submitting a new Disclosure Affidavit. Failure to comply with this requirement is grounds for your firm 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 Compliance, 50 W. Washington, Room 200, Chicago, IL 60602.

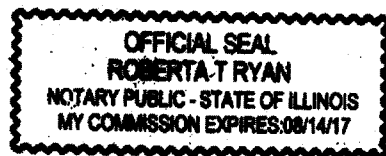
  
\_\_\_\_\_  
Signature of Authorized Officer  
Joseph M. Hoerner  
\_\_\_\_\_  
Name of Authorized Officer (Print or Type)  
Chief Operating Officer  
\_\_\_\_\_  
Title  
312-327-1308  
\_\_\_\_\_  
Telephone Number

State of Illinois

County of Cook

Signed and sworn to before me on this 11 day of Dec, 2013 by  
Joseph M. Hoerner (Name) as Chief Operating Officer (Title) of  
Cotter Consulting, Inc. (Bidder/Proposer/Respondent or Contractor)

  
\_\_\_\_\_  
Notary Public Signature and Seal





DEPARTMENT OF PROCUREMENT SERVICES  
CITY OF CHICAGO

SEP 30 2013

Ms. Anne Edwards-Cotter  
Cotter Consulting, Inc.  
100 South Wacker Drive, Suite 920  
Chicago, IL 60606

Dear Ms. Cotter:

We are pleased to inform you that **Cotter Consulting, Inc.** has been recertified as a **Women Business Enterprise ("WBE")** by the City of Chicago ("City"). This **WBE** certification is valid until **7/1/2017**; however your firm's certification must be revalidated annually. In the past the City has provided you with an annual letter confirming your certification; such letters will no longer be issued. As a consequence, we require you to be even more diligent in filing your **annual No-Change Affidavit 60 days** before your annual anniversary date.

It is now your responsibility to check the City's certification directory and verify your certification status. As a condition of continued certification during the five year period stated above, you must file an annual No-Change Affidavit. Your firm's **annual No-Change Affidavit** is due by **7/1/2014, 7/1/2015, and 7/1/2016**. Please remember, you have an affirmative duty to file your **No-Change Affidavit 60 days** prior to the date of expiration. Failure to file your annual No-Change Affidavit may result in the suspension or rescission of your certification.

Your firm's five year certification will expire on **7/1/2017**. You have an affirmative duty to file for recertification **60 days** prior to the date of the five year anniversary date. Therefore, you must file for recertification by **5/1/2017**.

It is important to note that you also have an ongoing affirmative duty to notify the City of any changes in ownership or control of your firm, or any other fact affecting your firm's eligibility for certification **within 10 days** of such change. These changes may include but are not limited to a change of address, change of business structure, change in ownership or ownership structure, change of business operations, gross receipts and or personal net worth that exceed the program threshold. Failure to provide the City with timely notice of such changes may result in the suspension or rescission of your certification. In addition, you may be liable for civil penalties under Chapter 1-22, "False Claims", of the Municipal Code of Chicago.

Please note – you shall be deemed to have had your certification lapse and will be ineligible to participate as a **WBE** if you fail to:

- File your annual No-Change Affidavit within the required time period;

121 NORTH LASALLE STREET, ROOM 806, CHICAGO ILLINOIS 60602

*JP*  
*D.W.*

- Provide financial or other records requested pursuant to an audit within the required time period;
- Notify the City of any changes affecting your firm's certification **within 10 days** of such change; or
- File your recertification within the required time period.

Please be reminded of your contractual obligation to cooperate with the City with respect to any reviews, audits or investigation of its contracts and affirmative action programs. We strongly encourage you to assist us in maintaining the integrity of our programs by reporting instances or suspicions of fraud or abuse to the **City's Inspector General at [chicagoinspectorgeneral.org](http://chicagoinspectorgeneral.org), or 866-IG-TIPLINE (866-448-4754).**

Be advised that if you or your firm is found to be involved in certification, bidding and/or contractual fraud or abuse, the City will pursue decertification and debarment. In addition to any other penalty imposed by law, any person who knowingly obtains, or knowingly assists another in obtaining a contract with the City by falsely representing the individual or entity, or the individual or entity assisted is guilty of a misdemeanor, punishable by incarceration in the county jail for a period not to exceed six months, or a fine of not less than \$5,000 and not more than \$10,000 or both.

Your firm's name will be listed in the City's Directory of Minority and Women-Owned Business Enterprises in the specialty area(s) of:

**NAICS Code(s):**

**236116 – Construction Management, Multifamily Building**

**236210 – Construction Management, Industrial Building (except warehouses)**

**236220 – Construction Management, Commercial and Institutional Building**

**236220 – Project Management**

**237310 – Construction Management, Highway, Road, Street, and Bridge**

Your firm's participation on City contracts will be credited only toward **Women Business Enterprise** goals in your area(s) specialty. While your participation on City contracts is not limited to your area of specialty, credit toward goals will be given only for work that is self-performed and providing a commercially useful function that is done in the approved specialty category.

Thank you for your interest in the City's Women-Owned Business Enterprise (WBE) Program.

Sincerely,



Jamie L. Rhee  
Chief Procurement Officer

JLR/cm