



# City of Chicago



O2013-4848

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	6/5/2013
<b>Sponsor(s):</b>	Emanuel, Rahm (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Intergovernmental agreement with Metropolitan Pier and Exposition Authority regarding Tax Increment Financing for Cermak Road Streetscape Project
<b>Committee(s) Assignment:</b>	Committee on Finance

CHICAGO June 26, 2013

**To the President and Members of the City Council:**

**Your Committee on Finance having had under consideration**

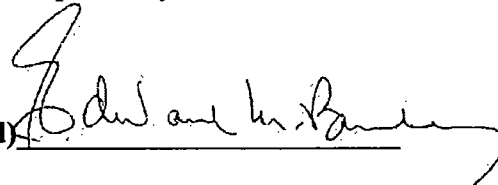
An ordinance authorizing the Commissioner of the Department of Housing and Economic Development to enter into and execute an Intergovernmental Agreement with the Metropolitan Pier and Exposition Authority for the streetscaping of the north side of Cermak Road from Prairie Avenue to Calumet Avenue.

O2013-4848

**Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith**

**This recommendation was concurred in by \_\_\_\_\_ (a viva voce vote of members of the committee with \_\_\_\_\_ dissenting vote(s).**

**Respectfully submitted**

(signed) 

**Chairman**



FIN.

OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

June 5, 2013

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Housing and Economic Development, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Metropolitan Pier and Exposition Authority regarding TIF assistance.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

## ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule unit of local government under the 1970 Constitution of the State of Illinois and has the authority to promote the health, safety and welfare of its inhabitants, to furnish essential governmental services through its various departments and agencies and to enter into contractual agreements with units of local government for the purpose of achieving the aforesaid objectives; and

WHEREAS, the Metropolitan Pier and Exposition Authority (the "Authority") is a political subdivision, unit of local government, body politic and municipal corporation existing under the laws of the State of Illinois pursuant to the Metropolitan Pier and Exposition Authority Act, as amended, 70 ILCS 210/1 *et seq.*; and

WHEREAS, at the request of the City, acting through the Department of Housing and Economic Development ("DHED") and the Department of Transportation ("CDOT"), the Authority has agreed to undertake the streetscaping of the north side of Cermak Road from Prairie Avenue to Calumet Avenue (the "Site") (the streetscaping of the Site shall be known herein as the "Project"); and

WHEREAS, it is contemplated by the City and the Authority that the Authority will provide development services, including the design and construction of the Project; and

WHEREAS, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/1-74.4-1 *et seq.*, as amended from time to time (the "TIF Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, the City Council (the "City Council") of the City of Chicago (the "City") adopted the following ordinances in accordance with the TIF Act on July 29, 1998: (1) approving a tax increment redevelopment plan for the Calumet Avenue/Cermak Road Redevelopment Project Area (the "Calumet/Cermak Redevelopment Area"); (2) designating the Calumet/Cermak Redevelopment Area as a tax increment financing district; and (3) adopting tax increment allocation financing for the Calumet/Cermak Redevelopment Area; and

WHEREAS, the City Council adopted the following ordinances in accordance with the TIF Act on September 13, 1989, as amended on March 21, 1990 and May 12, 1999: (1) approving a tax increment redevelopment plan for the Michigan Avenue/Cermak Road Redevelopment Project Area (the "Michigan/Cermak Redevelopment Area"); (2) designating the Michigan/Cermak Redevelopment Area as a tax increment financing district; and (3) adopting tax increment allocation financing for the Michigan/Cermak Redevelopment Area; and

WHEREAS, the Site lies mostly within the boundaries of the Calumet/Cermak Redevelopment Area, and the balance of the Site lies within the boundaries of the Michigan/Cermak Redevelopment Area; and

WHEREAS, under the TIF Act, such incremental ad valorem taxes, which pursuant to the TIF Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment"), may be used, among other purposes, to pay the cost of public works and improvements as well as to acquire and construct public facilities, as contemplated in a redevelopment plan, and obligations relating thereto; and

WHEREAS, the City wishes to make available to the Authority a portion of the Increment from the Calumet/Cermak Redevelopment Area and the Michigan/Cermak Redevelopment Area in an amount not to exceed \$360,000 (\$306,000 of which is anticipated to be Increment from the Calumet/Cermak Redevelopment Area and \$54,000 of which is anticipated to be Increment from the Michigan/Cermak Redevelopment Area) for the purpose of providing the funds required for the construction of the Project; and

WHEREAS, the redevelopment plans for the Calumet/Cermak and Michigan/Cermak Redevelopment Areas contemplate that tax increment financing assistance would and will be provided for the construction of public improvements, such as the Project, within the boundaries of the Calumet/Cermak and Michigan/Cermak Redevelopment Areas; and

WHEREAS, the City, acting primarily through DHED and CDOT but also through the Office of Budget and Management, intends to participate actively with the Authority in the planning and implementation of the Project; and

WHEREAS, the City and the Authority have determined that it is necessary, desirable and in the public interest to enter into an intergovernmental agreement in substantially the form attached as an exhibit hereto (the "Agreement") in order to set forth their respective objectives, duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

Section 1. The recitals of this ordinance are hereby incorporated into this text as if set out herein in full.

Section 2. The Commissioner of DHED (the "DHED Commissioner") or a designee thereof is hereby authorized to execute, subject to the review of the Corporation Counsel as to form and legality, the Agreement and such other documents as are necessary, between the City and the Authority, which may contain such other terms as are deemed necessary or appropriate by the DHED Commissioner. In particular, but not by way of limitation, the DHED Commissioner or a designee thereof is hereby authorized to execute any amendment to the Agreement which may increase the Budget (as such term is defined in the Agreement) for the Project and the corresponding payment to the Authority from Increment from the Calumet/Cermak Redevelopment Area and/or the Michigan/Cermak Redevelopment Area by not more than \$400,000 in the aggregate.

Section 3. The DHED Commissioner, the Commissioner of the Department of Transportation, the Budget Director and their respective designees are each authorized to execute such additional documents, information, assurances and certifications and to take such additional actions in connection with the Project as may be necessary or required pursuant to the Agreement as contemplated therein.

Section 4. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall be controlling. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph,

clause or provision shall not affect any of the other provisions of this ordinance.

Section 5. This ordinance shall take effect upon its passage and approval.

## EXHIBIT

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### INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHICAGO AND THE METROPOLITAN PIER AND EXPOSITION AUTHORITY (CERMAK ROAD STREETScape)

This Intergovernmental Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2013 is made by and between the City of Chicago, having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 (the "City"), and the Metropolitan Pier and Exposition Authority, having its principal offices at 301 East Cermak Road, Chicago, Illinois 60616-2421 (the "Authority" or "MPEA").

#### RECITALS

A. The City is a home rule unit of local government under the 1970 Constitution of the State of Illinois and has the authority to promote the health, safety and welfare of its inhabitants, to furnish essential governmental services through its various departments and agencies and to enter into contractual agreements with units of local government for the purpose of achieving the aforesaid objectives. The Authority is a political subdivision, unit of local government, body politic and municipal corporation existing under the laws of the State of Illinois pursuant to the Metropolitan Pier and Exposition Authority Act, as amended, 70 ILCS 210/1 *et seq.* (the "MPEA Act").

B. At the request of the City, acting through the Department of Housing and Economic Development ("DHED") and the Department of Transportation ("CDOT"), the Authority has agreed to undertake the streetscaping of the north side of Cermak Road from Prairie Avenue to Calumet Avenue (the "Site"), as described in more detail on Exhibit A hereto (the streetscaping of the Site shall be known herein as the "Project").

C. It is contemplated by the City and the Authority that the Authority will provide development services, including the design and construction of the Project.

D. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/1-74.4-1 *et seq.*, as amended from time to time (the "TIF Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects.

E. The City Council (the "City Council") of the City of Chicago (the "City") adopted the following ordinances in accordance with the TIF Act on July 29, 1998: (1) approving a tax increment redevelopment plan for the Calumet Avenue/Cermak Road Redevelopment Project Area (the "Calumet/Cermak Redevelopment Area"); (2) designating the Calumet/Cermak Redevelopment Area as a tax increment financing district; and (3) adopting tax increment allocation financing for the Calumet/Cermak Redevelopment Area (items(1)-(3) collectively referred to herein as the "Calumet/Cermak TIF Ordinances").

F. The City Council adopted the following ordinances in accordance with the TIF Act on September 13, 1989, as amended on March 21, 1990 and May 12, 1999: (1) approving a tax increment redevelopment plan for the Michigan Avenue/Cermak Road Redevelopment Project Area (the "Michigan/Cermak Redevelopment Area"); (2) designating the Michigan/Cermak Redevelopment Area as a tax increment financing district; and (3) adopting

tax increment allocation financing for the Michigan/Cermak Redevelopment Area (items(1)-(3) collectively referred to herein as the "Michigan/Cermak TIF Ordinances").

G. The Site lies mostly within the boundaries of the Calumet/Cermak Redevelopment Area, and the balance of the Site lies within the boundaries of the Michigan/Cermak Redevelopment Area.

H. Under the TIF Act, such incremental ad valorem taxes, which pursuant to the TIF Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment"), may be used, among other purposes, to pay the cost of public works and improvements as well as to acquire and construct public facilities, as contemplated in a redevelopment plan, and obligations relating thereto.

I. The City wishes to make available to the Authority a portion of the Increment from the Calumet/Cermak Redevelopment Area and the Michigan/Cermak Redevelopment Area in an amount not to exceed \$360,000 (\$306,000 of which is anticipated to be Increment from the Calumet/Cermak Redevelopment Area and \$54,0000 of which is anticipated to be Increment from the Michigan/Cermak Redevelopment Area) for the purpose of providing the funds required for the construction of the Project to the extent and in the manner provided in this Agreement.

J. The redevelopment plans for the Calumet/Cermak and Michigan/Cermak Redevelopment Areas contemplate that tax increment financing assistance would and will be provided for the construction of public improvements, such as the Project, within the boundaries of the Calumet/Cermak and Michigan/Cermak Redevelopment Areas.

K. The City, acting primarily through DHED and CDOT but also through the Office of Budget and Management, intends to participate actively with the Authority in the planning and implementation of the Project.

L. The parties have determined that it is necessary, desirable and in the public interest to enter into this Agreement in order to set forth their respective objectives, duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

#### DEFINITIONS

For purposes of this Agreement, each of the following terms shall have the respective meaning assigned to it as follows:

Architect of Record: The firm or entity employed by the Authority or its designee for the purpose of designing and observing the Work for compliance with the Contract Documents.

Authority: The Metropolitan Pier and Exposition Authority, an Illinois municipal corporation.

Authorized Authority Representative: The person or entity employed or retained by the Authority to provide planning, development, construction management, administration and/or coordination services for the Project.



**Authorized CDOT Representative:** The Commissioner of CDOT, including the duly designated representative thereof, who is designated as CDOT's representative in the planning and implementation of the Project.

**Authorized DHED Representative:** The Commissioner of DHED, including the duly designated representative thereof, who is designated as DHED's representative in the planning and implementation of the Project.

**Board:** The Board of the Metropolitan Pier and Exposition Authority.

**Budget:** The budget for the planning, design, and construction of the Project as set forth on Exhibit B attached hereto. For purposes of this Agreement, the term "Budget" includes, as the case may be and as agreed to by the Budget Director, the Authorized CDOT Representative, the Authorized DHED Representative and the Authority, as a result of the review process more fully described in Section 2.2 hereof:

(a) Formulation Budget(s) that will permit the Authority to perform Formulation Services as defined in this Definitions Section;

(b) Undertaking Budget that will permit the Authority to begin design, bidding and construction of the Project; and

(c) Revised Budget(s) as necessary to reflect bid results or changes in scope.

**Budget Director:** The Budget Director of the City, including the duly designated representative thereof, who is designated by the City to receive notices pursuant to this Agreement and otherwise act as the City's representative in implementing the financial requirements of this Agreement.

**Building Program:** The requirements specified by DHED and CDOT with respect to the Project including, but not limited to the nature, scope and extent of the Project and facilities and the size, type, function, spatial relationships, and materials to be used in the design and construction of the Project.

**CDOT:** The Department of Transportation of the City.

**Certificate of Final Acceptance:** The certificate, substantially in the form attached hereto as Exhibit C2, which shall be delivered by the Authority to CDOT to certify that a Certificate of Final Completion has been issued by the Architect of Record for the Project, that the Authority has verified that all punch list work has been completed, and that all deliverables, including but not limited to the items as provided in Section 10.6, have been transmitted to CDOT.

**Certificate of Substantial Completion:** The certificate issued by the Architect of Record to certify that the Project has been essentially completed except for Punch List Work and the City is able to occupy and use the Project for the purpose intended.

**Chief Executive Officer:** The Chief Executive Officer, including the duly designated representative thereof, of the Authority.

**City:** The City of Chicago, an Illinois municipal corporation.

City Council: The City Council of the City.

Contract: A contract, including all of the Contract Documents as described therein, between the Authority and a Contractor to perform services and/or provide labor, materials, equipment and other Work and facilities required for the completion of the Project. For purposes of this Agreement, the term "Contract" may include multiple agreements including but not limited to a professional services agreement, general construction contract, construction management contract or other form of agreement required for Project-related activities.

Contract Documents: The drawings, specifications and program requirements (including, without limitation, civil, architectural, structural, mechanical, plumbing, fire protection and electrical drawings and technical specifications) developed by the Architect of Record for the construction of the Project as approved by the Authorized Authority Representative and the Authorized CDOT Representative for compliance with the approved Building Program and all other documents attached to the Contract and/or incorporated by reference into the Contract.

Contractor: An individual or firm that contracts with the Authority to perform services and/or provide Work in connection with the Project in accordance with the Standard of Performance as provided in this Agreement. For purposes of this Agreement, the term "Contractor" may include a general or specialty contractor, subcontractor, design entity, construction manager, environmental consultant or other consultants engaged by the Authority to implement the Project.

Corporation Counsel: The Corporation Counsel, including the duly designated representative thereof, of the City.

DHED: The Department of Housing and Economic Development of the City.

Final Completion: The last date on which all of the following events have occurred: the Authority in consultation with the Authorized CDOT Representative has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed and operating systems and equipment testing have been completed; all deliverables as provided in Section 10.6 hereof have been provided to the Authority and forwarded to CDOT; and all contractual requirements for final payment to the Contractor have been completed.

Formulation Services: Formulation services refer to a range of planning and pre-development activities, including, without limitation, environmental testing, and concept design.

IEPA: The Illinois Environmental Protection Agency.

Municipal Code: The Municipal Code of Chicago.

Notice of Substantial Completion: The certificate, substantially in the form attached hereto as Exhibit C1, which shall be delivered by the Authority to the Authorized CDOT Representative along with a Certificate of Substantial Completion issued by the Architect of Record and a copy of the Punch List.

Project: As defined in the Recitals and Section II.

**Project Account:** An existing interest-bearing account of the Authority that will be used for purposes of depositing funds advanced by the City to pay the costs incurred by the Authority in implementing the Project as more fully described in Section 9.3 hereof.

**Punch List or Punch List Work:** Minor adjustments or repairs in the Work as determined by the Architect of Record that must be completed prior to Final Completion and Acceptance of the Work and the issuance of the Certificate of Final Completion. The Authorized Authority Representative and the Authorized CDOT Representative shall have the right to consult with the Architect of Record concerning the preparation and completion of the Punch List.

**Schedule:** The anticipated date or dates on which the Project or portions thereof shall be completed.

**Site:** The public right of way upon which the Project will be constructed.

**Site Work:** Any remediation of adverse environmental site conditions, demolition or other site development work in connection with the Project that may be undertaken by the Authority.

**Standard of Performance.** In addition to performing the Work in full compliance with the Contract Documents, the Contractor must perform, or cause to be performed, all Work required of it under the terms and conditions of the Contract with the degree of skill, care and diligence normally exercised by qualified and experienced contractors in performing work in a project of a scope and magnitude comparable to the Work.

**Substantial Completion:** The date on which the Architect of Record has issued a Certificate of Substantial Completion certifying that the Project has been essentially completed in accordance with the Contract Documents except for Punch List Work that will not preclude the beneficial use and occupancy of the Project for the purpose intended. The date of Substantial Completion shall be the later of: (1) the date indicated in the Certificate of Substantial Completion used by the Architect of Record; and (2) the date on which the independent Commissioning agent has certified in writing that all systems are operating as designed; provided, however, if the City rejects the Project as not being substantially complete in accordance with Section 10.4, the date of Substantial Completion will be the date upon which MPEA or the Contractor remedies any outstanding issues to the satisfaction of the City.

**Work:** Work means the obligations of the Contractor under the Contract Documents. Work includes, unless specifically excluded by the Contract Documents, the furnishing of all materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed, or built pursuant to the Contract Documents.

## SECTION I INCORPORATION OF RECITALS AND DEFINITIONS

The recitations and definitions set forth above constitute an integral part of the Agreement and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

## SECTION II SCOPE OF PROJECT

2.1. Project. The Authority will coordinate and manage the planning, design and construction of the Project on behalf of the City. The Project will be undertaken by the Authority pursuant to the terms of this Agreement, the TIF Act, the MPEA Act, the Contract Documents, the Municipal Code and all other applicable rules, regulations, statutes and ordinances. All work proposed in the public way must be designed and constructed in accordance with the Department of Transportation Construction Standards for Work in the Public Way and in compliance with the Municipal Code of the City of Chicago.

2.2 Review of Project. The parties by their designated representatives will review the proposed design, engineered site plans (showing, among other things, dimensions and turning movements for trucks), scope of the Work, the preliminary Budget, remediation of environmental conditions, site preparation work, and any other factors that may affect the coordination or cost of the Project or the Schedule. Upon completion of such review procedures, the parties shall approve in writing the Building Program, the conceptual design, the Undertaking Budget and the Project schedule in the form of the undertaking authorization for such Project. Following such approval, the Authority shall proceed with the design, bidding and construction of the Project in accordance with the terms of this Agreement. Subsequent to bidding, a Revised Budget shall be provided to the parties which shall reflect the Project cost after the competitive bidding process or as necessary to reflect any changes in scope after the Undertaking Budget; provided, however, as the Project is intended to be designed to not exceed the Budget, if the Revised Budget exceeds that attached as Exhibit B hereto, the parties will work diligently to change the scope of work in order to not exceed the Budget or to increase the Budget pursuant to Section 9.4 hereof.

### SECTION III RESPONSIBILITIES OF THE PARTIES

3.1 The Authority. In discharging its obligations to construct the Project on behalf of the City, the Authority will perform project planning, design oversight, construction administration and other project management services as may be needed to complete the Project. Specific responsibilities of the Authority with respect to the implementation of the Building Program include, but are not limited to, the following (which are not necessarily presented in sequential order):

- 3.1.1 [intentionally omitted];

3.1.2 [intentionally omitted];

3.1.3 [intentionally omitted];

3.1.4 Negotiate with any public or quasi-public agencies or authorities having ownership or other interests in and to the Site (other than the City) in order to acquire any easements or reversionary interests necessary in order to develop the Site for the intended purpose;

3.1.5 Participate in such interaction, consultation, meetings and other activities with community organizations, public agencies, elected officials and other interested parties as may be necessary for the efficient construction of the Project;

3.1.6 Engage or cause to be engaged the services of such environmental consultants as may be necessary in order to prepare bid and construction documents, monitor the Site Work and perform other services as directed by the Authority;

3.1.7 [intentionally omitted];

3.1.8 [intentionally omitted];

3.1.9 Prepare or cause to be prepared the terms and conditions of the Contract, which shall be forwarded by the Authority to the Authorized CDOT Representative for review and comment prior to the solicitation of bids and/or proposals for the Work upon request;

3.1.10 Solicit or cause to be solicited bids and/or proposals for the Contract and any other Work as may be required for the design and construction of the Project;

3.1.11 Engage the services of such architectural, engineering and other design and/or construction consultants as may be necessary for the completion of the Project, incorporating into the Contract with any such design entity the copyright provisions set forth on Exhibit D attached hereto and incorporated herein by reference. The Authority shall assign to the City any and all such copyrights which have been conveyed to the Authority;

3.1.12 Examine all documents submitted by the City, CDOT, or a Contractor and render decisions pertaining thereto with reasonable promptness in order to avoid delay in the completion of the Project;

3.1.13 Obtain such surveys, title information, environmental tests and other reports and documents as may be necessary or advisable in order to determine the condition of the Site and factors that may affect the cost of completion of the Project or the Schedule, and obtain approval of the environmental remediation plan, if required, from IEPA.

3.1.14 Determine the types and amounts of insurance and payment and performance bonds to be provided by the Contractor and the sufficiency of evidence that such coverages are in force as more fully described in Section 7.3 and Section 8.2 hereof;

3.1.15 Require and procure from the Contractor waivers for all liens or rights of lien for labor and materials furnished by or through it in the construction of the Project prior to processing interim and final pay requests as more fully described in Section 7.4 hereof;

3.1.16 Require, by appropriate provision in the Contract, that the Contractor indemnify, save and hold harmless the City and the Authority as more fully described in Section 8.1 hereof;

3.1.17 In consultation with the Authorized CDOT Representative, the Authorized DHED Representative and the Budget Director, approve any and all changes to the Contract including increases or decreases in the scope of the Work of the Contractor and adjustments in the contract price occasioned thereby which do not result in an increase in the overall Budget for the Project;

3.1.18 Apply the funds deposited in the Project Account or otherwise paid by the City solely to obtain the full and faithful completion of the Project in accordance with the Budget unless otherwise authorized by the Budget Director;

3.1.19 Enforce the terms and conditions of the Contract and all other agreements pertaining to the Project, consistent with the requirements thereof;

3.1.20 Avail itself of the rights and remedies in the Contract and all other agreements pertaining to the Project, it being understood and agreed that the Work is under charge and care of the Authority to protect the best interests of the City; and

3.1.21 Provide for such additional services as may be requested in writing by the Budget Director, the Authorized DHED Representative, or the Authorized CDOT Representative with respect to the Project provided that sufficient funds are available to pay the costs of such services.

3.1.22 Enforce the Standard of Performance in all Work.

3.1.23 Serve as the primary point of contact with the Contractor to resolve any design, construction, or other Project-related issues during the period of the Contractor's Warranty (as such term is defined in Section 10.1).

3.1.24 Incorporate into each Contract the following representation and warranty:

"Neither the Contractor nor any affiliate of the Contractor is listed on any of the following lists maintained by the Office of 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 City 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."

3.2 The City. The Authorized DHED Representative, the Authorized CDOT Representative and the Budget Director, in consultation with the Authorized Authority Representative, shall approve the nature and scope of the Project. The City shall pay all costs of implementing the Project as set forth in the Budget for the Project. In no event shall the Authority be obligated to pay, nor shall the Authority disburse any funds from the Project Account that exceeds the overall Budget for the Project without the written approval of the Budget Director. The Authority may re-allocate funds among line items within the Budget which

do not increase the overall Budget for the Project as more fully described in Section 9.4 hereof. Specific responsibilities of the City include, but are not limited to, the following:

3.2.1 Provide information to the Authority regarding the requirements of DHED and CDOT for the Building Program;

3.2.2 Approve a preliminary Budget for the Project which shall include, without limitation, contingencies for bidding, changes during construction and other costs which are the responsibility of the City and, in consultation with the Authorized Authority Representative, determine the final Budget for the Project;

3.2.3 Designate the Authorized DHED Representative, the Authorized CDOT Representative and their respective duly designated representatives to act on the City's behalf with respect to the Project for the purpose of attending meetings, examining documents and rendering timely decisions pertaining to the design, construction and acceptance of the Project;

3.2.4 In consultation with the Authorized Authority Representative, the Authorized CDOT Representative and the Authorized DHED Representative shall review and approve in writing all change orders that cause the cost of the Project to exceed the overall Budget for this Project;

3.2.5 Pay all costs incurred by the Authority in connection with the implementation of the Project as provided in the Budget and approved by the Budget Director;

3.2.6 Cooperate with the Authority and its designated representatives in obtaining any and all approvals pertaining to the use of the Site, and execute any applications for permit or the like as may be required in order to develop and construct the Project that will be constructed on property owned by the City;

3.2.7 [intentionally omitted]; and

3.2.8 Provide such additional assistance as shall be agreed by the parties.

#### SECTION IV SITE AVAILABILITY AND ACCESS

4.1 [intentionally omitted]

4.2 [intentionally omitted]

4.3 Right of Entry. It is expressly acknowledged and agreed that the Authority and the City and their respective employees, consultants and the Contractor shall have the right to enter upon the Site or portion thereof owned by the Authority or the City for purposes associated with the development and implementation of the Project and other related facilities and the completion of the Project without further authorization by the Authority or the City. Any Contractor that may enter upon the Site for such purposes at the direction of the Authority or the City, as applicable, will be required to indemnify the Authority or the City, as applicable, and their respective Commissioners, officials, employees, agents and representatives from and against all claims arising out of such entry and to provide to the Authority and CDOT, upon request, certificates of insurance evidencing the types and limits of insurance as specified on

Exhibit E. The Authority and the City shall be named as additional insured on all such insurance policies. The City shall cooperate with the Authority and its designated representatives in obtaining any and all approvals pertaining to the use of the Site, and execute any applications for permit or the like as may be required in order to develop and construct the Project.

4.4 Unpermitted Encumbrances. Neither the Authority nor the Contractor nor any of their respective Commissioners, officials, representatives, designees, agents, successors or assignees shall engage in any financing or other transaction the effect of which creates an encumbrance or lien upon the Site.

4.5 [intentionally omitted]

## SECTION V ENVIRONMENTAL CONDITIONS

5.1 [intentionally omitted]

5.2 [intentionally omitted]

5.3 Environmental Laws. The Authority agrees that at all times during its performance of this Agreement, it shall cause the Contractor to comply, with all "Environmental Laws." "Environmental Laws" mean any and all Federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago, including but not limited to the Municipal Code of Chicago, Sections 7-28-390, 7-28-440; 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560. Upon the City's request, the Authority and/or the Contractor will provide evidence satisfactory to the City of such current compliance.



## SECTION VI CONSTRUCTION OF THE PROJECT

6.1 Preparation of Contract Documents. The Authority shall determine whether to appoint an Architect of Record as defined above or other design entity, to prepare design documents, issue a request for proposals that includes the preparation of the design documents, or proceed in some other manner to obtain design documents that are sufficiently complete to solicit bids or proposals for the construction of the Project. The Authority shall provide a copy of such design submittals to the Authorized CDOT Representative for review and approval to determine compliance with the Building Program. CDOT shall use its best efforts to provide written comments to the Authority within (10) business days from the receipt of each submittal. If CDOT provides written comments to the Authority on the final design review submittal, such review submittal being denoted as final by the Authority, then the Authority will work diligently with CDOT to address the comments in a manner satisfactory to all parties. The Authority shall include in the Contract Documents a space for CDOT to confirm its acceptance of the final design.

6.2 Selection of Contractor. Upon completion of the Contract Documents, the Authority shall solicit bids or proposals for the construction of the Project or portion thereof by public advertisement, or from pre-qualified contractors in consultation with the Authorized DHED Representative and the Authorized CDOT Representative, as determined by the Authority in accordance with its usual and customary procurement procedures. The Authority shall review and evaluate the bids or proposals received for the construction of the Project and conduct such investigations as may be necessary and appropriate to determine the responsiveness of the bid or proposal and the proposed cost of constructing the Project in accordance with the Budget. During the bid review period, the Authorized CDOT Representative and the Budget Director shall have the right to attend meetings and participate in the evaluation process. Following the bid review process, the Board upon recommendation of the Chief Executive Officer shall award the Contract to the lowest responsible and responsive bidder, subject to Section 6.5 hereof.

6.3 Limited Applicability of Approval. Any approvals of the design of the Project, Site Work or the Contract Documents made by the Authorized CDOT Representative for purposes of this Agreement only and do not affect or constitute approvals required for building permits or approvals required pursuant to federal, state or local law, code or any ordinance or order of the City, nor shall any such approval constitute approval of the quality, structural soundness or the safety of the Project. It is understood and agreed that the Authority shall act on behalf of the City in ensuring the Contractor's compliance with all applicable laws and requirements.

6.4 Ownership of Documents. All documents, including but not limited to, all data, certificates, schematics, warranties, environmental remediation documents, prototype and other design documents, copyrights and Contract Documents with regard to the development and construction of the Project shall be the property of the City. The Authority shall assign and transfer ownership of all such documents and materials that it may have obtained from the Contractor or others to CDOT on behalf of the City at Final Completion of the Project.

6.5 Debarred Vendors. The Authority shall not retain for the Project any architect, consultant, contractor, materials provider or other vendor that has been debarred or otherwise disqualified from doing business with the City by its Chief Procurement Officer.

## SECTION VII ADMINISTRATION OF THE PROJECT

7.1 **Enforcement of Contract.** The Authority shall comply, and cause the Contractor to comply, with the terms and conditions of the Contract as appropriate and applicable, including all applicable federal, state and local laws, codes, ordinances and orders now or hereafter in force. Such requirements include, but are not limited to, accessibility standards for persons with disabilities or environmentally limited persons, the Illinois Prevailing Wage Act, the Chicago Human Rights Ordinance, Equal Employment Opportunity and affirmative action requirements, the Authority's Special Conditions regarding Minority-Owned Business Enterprises and Women-Owned Business Enterprises participation, Chicago residency requirements and community hiring requirements, which are incorporated herein by reference.

7.2 **Coordination with the City.** The Authority shall inform the Authorized DHED Representative, the Authorized CDOT Representative, the Corporation Counsel and the Budget Director of the status of progress regarding the implementation of the Project not less frequently than on a quarterly basis and, upon request, provide the Authorized DHED Representative, the Authorized CDOT Representative and the Budget Director with a copy of any reports or other documents that may have been obtained by the Authority. As soon as reasonably practicable, the Authority shall provide the Authorized DHED Representative, the Authorized CDOT Representative and the Budget Director with any information which may result in an exceedance of the Budget or may cause the construction of the Project to be delayed beyond the dates specified in the Schedule. The Authorized DHED Representative and the Authorized CDOT Representative shall have the right to inspect the Project at all reasonable times and to attend meetings with representatives of the Authority, the Contractor and others regarding the Project. In order to protect the City and the Authority from incurring additional costs as a result of unauthorized work, any requests or directions that the Authorized DHED Representative or the Authorized CDOT Representative may have with respect to the construction of the Project shall be directed to the Authorized Authority Representative and not to the Contractor. The Authorized CDOT Representative will provide to the Authority prompt, accurate and complete information regarding the requirements of CDOT, so that the progress of the Project will not be impeded. All data provided by CDOT shall be evaluated by the Authorized Authority Representative, who shall have the right to recommend alternative approaches and value engineering in order to reduce costs while maintaining the overall quality of the Project and the Schedule.

7.3 **Payment and Performance Bond.** The Authority, as set forth in Section 3.1.14, shall determine the type and amount of payment and performance bonds required for the Project and require the Contractor to provide a payment and performance bond to ensure that the terms and conditions of the Contract Documents will be faithfully performed. The payment and performance bond shall be in the amount specified in the Contract and issued by a surety company licensed to do business in the State of Illinois and approved by the Authority. If the surety fails or is deemed by the Authority to be insufficient security for the completion of the Project, the Authority will require the Contractor to furnish an additional bond in such amount as may be determined by the Authority. Any proceeds derived by the Authority as a result of the payment and performance bond shall be credited to the Project Account and applied as agreed by the Authority and the Budget Director.

7.4 **Waiver and Release of Liens.** The Authority, as set forth in Section 3.1.15 shall require and procure from the Contractor waivers of liens or rights of lien for all labor and materials furnished in the constructing or improving the Project. This provision shall be

construed as being solely for the benefit of the Authority and the City and shall not confer any rights hereunder for the benefit of the Contractor or its subcontractors. To ensure payment of lien claims, the Authority shall retain the amounts of the liens claimed by subcontractors or suppliers from payments to the Contractor unless an appropriate waiver or mechanic's lien bond is provided or the lien funds are deposited with the Circuit Court of Cook County, Illinois in accordance with applicable Illinois legal requirements and the Contract Documents. Except as provided above, the Authority shall not make final payment to Contractor nor shall any part of the amounts retained for lien claims be paid until the Contractor shall have delivered to the Authority a complete release of all liens, financial obligations or claims from the Contractor, subcontractor, and other agents acting on its behalf in connection with the Work or arising out of the Work and an affidavit that so far as the Contractor has knowledge or information, releases all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, then the Contractor shall be required to refund to the Authority all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees. Any amounts so refunded shall be for the benefit of the City and credited to the Project Account.

7.5 Default by Contractor. In the event that the Contractor defaults in its obligations under the Contract, the Authority shall pursue all rights and remedies afforded to it pursuant to the terms of the Contract, at law or in equity. Upon request by the Authorized DHED Representative, the Authorized CDOT Representative, the Budget Director or the Corporation Counsel and approval by the Board, the Authority shall assign any of its rights and remedies for default by the Contractor to the City.

## SECTION VIII INDEMNITY AND INSURANCE

8.1 Indemnity. Each Contract awarded by the Authority for the Project shall require the Contractor to indemnify, save and hold harmless the Authority and the City, and their respective Commissioners, officers, agents, employees and representatives, individually and collectively, from all claims, demands, actions and the like, made or instituted by third parties arising or alleged to arise out of the Work as a result of any act or omission of the Contractor or any of its subcontractors or any of their respective employees or agents.

8.2 Insurance. The Authority, as set forth in Section 3.1.14, shall require the Contractor to purchase and maintain during the implementation of the Site Work and/or the performance of the Work, the types and amounts of insurance as shall be specified by the Authority substantially in the form attached hereto as Exhibit E or as otherwise agreed to by the City's Risk Management Office. Prior to the commencement of Work on the Project, the Authority shall obtain from the Contractor certificates of insurance evidencing the required insurance and certifying the name and address of the Contractor, the description of work or services covered by such policies, the inception and expiration dates of the policies and the specific coverages to be provided. The City and the Authority shall be included as named insureds as their respective interests may appear on the Contractor's insurance policies. A copy of any and all such insurance certificates shall be provided by the Authority to the Authorized CDOT Representative upon request. All such insurance shall be placed in financially responsible companies, satisfactory to the Authority and authorized under the insurance laws of the State of Illinois to do business in the State of Illinois. Upon issuance of the Notice of Substantial Completion as described in Section 10.4 hereof, the City shall be responsible for insuring the Site including all improvements thereon.

SECTION IX  
PAYMENT OF PROJECT COSTS

9.1 Cost of the Project. It is the intent of the parties that the cost of completing the Project shall not exceed the sums specified in the final Budget for the Project. All plans, specifications and estimates of costs shall be reviewed by the duly designated representatives of the parties. The City agrees (after approving the Authority's choice of counsel) to pay or reimburse the Authority for all reasonable legal fees, costs and expenses incurred by the Authority in undertaking the Project as follows:

9.1.1 [intentionally omitted]

9.1.2 Third-Party Negligence. Claims or proceedings against the Authority or the Contractor that arise out of a claim or proceeding that is instituted by third parties as a result of any negligent or willful act of the Contractor or any of its subcontractors or subconsultants shall be tendered to the Contractor for defense of the Authority and the City pursuant to Section VIII, Indemnity and Insurance, of this Agreement.

9.1.3 Construction Litigation. The Authority will use its best efforts to enforce the provisions of the Contract so that the Project is completed in a cost efficient, timely manner. The Authority will defend or prosecute, as applicable, rights and remedies afforded by the Contract in a reasonable, prudent manner. Unless the City consents otherwise, the Authority shall pursue and exhaust, and shall pursuant to the Contract require the Contractor to pursue and exhaust any alternative dispute resolution opportunities provided for under the Contract before litigating any dispute in connection with the Project. To the extent that payment of the Authority's legal costs and expenses are not recovered from the Contractor or any surety, the City agrees to pay or reimburse the Authority for costs incurred for legal costs and expenses subject to the following conditions:

9.1.3.1 The Authority will not initiate any legal proceeding related to the Project and no settlement shall be made without the prior written consent of the Budget Director and the Corporation Counsel;

9.1.3.2 The City shall have the right to approve (such approval not to be unreasonably withheld) counsel selected by the Authority;

9.1.3.3 The Authority will notify the Budget Director and the Corporation Counsel of any proceeding related to the Project within ten (10) days following receipt of summons and complaint or as otherwise directed by the Budget Director or the Corporation Counsel;

9.1.3.4 The Authority will apprise the Budget Director and the Corporation Counsel on a quarterly basis or otherwise as agreed by the parties concerning the status of any legal proceeding related to the Project;

9.1.3.5 The Authority, the Budget Director and the Corporation Counsel shall establish a separate legal budget as soon as practicable after the commencement of any legal proceeding related to a Project;

9.1.3.6 The Authority will provide a monthly legal services report summary related to the Project to the Budget Director and the Corporation Counsel;

9.1.3.7 Any legal fees, costs or expenses incurred must comply with the City's Outside Counsel Guidelines ("Guidelines") and for payment purposes must be submitted after notification to Patrick Ryan, the Corporation Counsel's Director of Administration, online to the City's legal auditor, Examen, for review and recommendation to the Authority of the invoice amounts to be paid; the Authority shall review the charges not in compliance with the Guidelines, as determined by the Examen, and process the invoices for payment; and

9.1.3.8 Notwithstanding the foregoing, in the event that the Authority is judged by a court of competent jurisdiction to have been negligent or to have committed other acts of misconduct involving a claim or other legal proceeding the parties will equitably adjust the reimbursement of legal fees and costs as appropriate.

9.1.4 Application of Funds. Any funds that may be recovered by the Authority as a result of any such legal proceedings shall be deposited in the Project Account and disbursed as directed by the Chief Executive Officer and the Budget Director.

9.1.5 Disclaimer. It is expressly understood and agreed that the City will not reimburse the Authority for any legal fees on account of findings against the Authority for breach of contract and/or breach of this Agreement.

9.2 [intentionally omitted]

9.3 Payment of Project Costs. The Authority shall provide the City with a cash flow for the Project upon request. The Authority shall prepare and provide to the Budget Director, on a quarterly basis in advance, the estimated amounts that will be required to pay the cost of the Project during the next succeeding ninety (90) days. Requests for payment shall include professional services, construction, administrative costs, contingency reserves and such other items as shall have been agreed by the parties ("Request for Payments"). Within thirty (30) days following receipt of a quarterly estimate and Request for Payment, the Budget Director shall process the Request for Payment and remit payment to the Authority, which payment shall consist of the estimated amounts required for payment of the costs of the Project during the next succeeding ninety (90) day period as such amounts may be adjusted from time to time by mutual agreement of the parties. The Authority will deposit such funds in the Project Account to pay eligible costs of the Project in accordance with the procedures specified in the Contract Documents for interim and final payments. Payments for professional services and other costs of the Project shall be on the basis of invoices approved by the Authority pursuant to its usual and customary payment procedures. In the event that such Request for Payment has not been paid to the Authority within thirty (30) days following the receipt of such Request for Payment, the Authority shall have the right to suspend its performance of this Agreement until payment is received.

9.4 Reallocation of Funds; Insufficient or Excess Funds. The Authority may re-allocate any line item in the Budget of the Project to any other cost or activity of the Project so long as the overall Budget for the Project is not exceeded. In the event that the amounts paid to the Authority by the City for the Project pursuant to the Budget shall be insufficient to complete Site Work and/or the construction of the Project, the Authority shall notify the Budget Director in

writing and the parties shall agree in writing on any future action that may be appropriate. In no event shall the Authority be obligated to expend any funds for the Project in excess of the amounts provided by the City. Any balance remaining in the Project Account 90 days after the date of Final Completion for the Project shall be disbursed as directed by the Budget Director.

9.5 Value Engineering; Alternate Project Approaches. If the Authority determines during project planning, design, or construction that Value Engineering or an Alternate Project Approach is necessary to meet the Budget or Schedule, the Authority shall submit such Value Engineering Recommendations or Alternate Project Approaches to DHED and CDOT for approval prior to implementation.

9.6 Records; Audit. The Authority shall maintain records and accounts of all financial transactions relating to the implementation of the Project. The City shall have the right to inspect the books and records of the Authority pertaining to the Project at all reasonable times.

## SECTION X COMPLETION OF THE PROJECT

10.1 Standards for Site Work and Construction. The Authority shall require the Contractor to provide for the Project materials that are new and Work of good quality, free from faults or defects, and implement any Site Work that may be required consistent with the requirements for environmental remediation approved by the Authority in consultation with representatives of CDOT and the IEPA, and construct the Project in conformity with the Standard of Performance set forth in this Agreement and the requirements of the Contract and the Contract Documents. The Authority shall also require that the Contractor correct any deficient or defective work or materials in accordance with the procedures described in the Contract Documents or as prescribed by law. For a period of one (1) year commencing no earlier than the date of Final Acceptance, or such longer period as may be required to enforce any applicable special warranty in any of the various subcontracts to the Contract, by the manufacturer or by law ("Contractor's Warranty"), the Authority shall assist the City by causing the Contractor to correct, repair or replace any such deficient or defective work or materials and any damage caused by such work and materials. Any equipment or material that is repaired or replaced will have the warranty period extended for a minimum period of one year from the date of the last repair or replacement if standard in the industry and consistent with the applicable warranty. Repairs or replacements that the Contractor makes under this provision must also include a manufacturer's warranty, if standard with the manufacturer, in addition to the Contractor's Warranty. In the event that the City requires the Authority's assistance to enforce the provisions of the Contract or the manufacturer's warranty, the Authority will cooperate with the City to enforce such Contract and cause the Contractor to correct any such deficient or defective Work or materials and any damage caused by such Work or materials.

10.2 Completion Requirements. The Authority shall require the Contractor to comply with the requirements of the Contract Documents with respect to the close-out of the Site Work and construction of the Project including, but not limited to, the completion of Punch List Work, the furnishing of material and equipment guarantees, warranties, operating and maintenance data, manuals and record and "as-built" drawings, shop drawings, waivers of lien, certified payrolls and such other documents as may be required to comply with the terms of the Contract. Upon Final Completion, the Authority will cause five (5) copies of the Certificate of Final Completion issued by the Architect of Record and all other relevant documents to be delivered to CDOT. Any liquidated damages that may be assessed by the Authority against a Contractor for non-performance or delay will be credited to the Project Account or otherwise disbursed as agreed by the Budget Director.

10.3 Inspections. All Work and materials constituting the Project shall be inspected by the Authorized Authority Representative, the Architect of Record, the Authorized CDOT Representative and any other personnel as designated by the City. The Authority shall notify the Authorized CDOT Representative when the Project has been scheduled for inspections to certify Substantial Completion and Final Completion. The Authorized CDOT Representative shall have the right to attend any and all such inspections. The Authority will monitor completion of Punch List Work by the Contractor and update the Authorized CDOT Representative on a periodic basis.

10.4 Notice of Substantial Completion. Upon issuance of the Certificate of Substantial Completion by the Architect of Record, the Authority shall deliver to the Authorized CDOT Representative a copy of such certificate. Upon delivery to the Authorized CDOT Representative of such certificates along with the Notice substantially in the form attached hereto as Exhibit C1, CDOT shall use best efforts to review the Certificate within ten (10) business days from receipt of the Certificate and provide a written acceptance thereof. If, however, CDOT contests the Certificate of Substantial Completion, the Authority and CDOT agree to work together with all diligence to remedy any outstanding issues to the satisfaction of CDOT, at which point CDOT will accept the Project as Substantially Complete.

10.5 Maintenance. The Authority will assume maintenance of all elements associated with the completed Project, including pavers, landscaping, irrigation, street furniture, and fencing.

10.6 Certificate of Final Acceptance. Upon issuance of the Certificate of Final Completion by the Architect of Record, the Authority shall deliver to the Authorized CDOT Representative a Certificate of Acceptance, substantially in the form attached hereto as Exhibit C2 along with a copy of the Certificate of Final Completion issued by the Architect of Record. The Certificate of Final Acceptance shall certify that each of the following have been completed and appropriate documentation delivered to CDOT: permits and licenses; shop drawings; "as-built" contract drawings; operation and maintenance manuals; training of CDOT personnel; and subcontractor/manufacturers warranties. Upon delivery of such certificates by the Authorized Authority Representative to the Authorized CDOT Representative, CDOT shall use best efforts to review the Certificates within (10) business days from receipt of the Certificates and provide a written acceptance thereof. If, however, CDOT contests the Certificates of Final Completion and Final Acceptance, the Authority and CDOT agree to work together with all diligence to remedy any outstanding issues to the satisfaction of CDOT, at which point the Authority shall submit revised Certificates of Final Completion and Final Acceptance to CDOT and for review and final approval as described previously in this paragraph.

10.7 Final Payment to Contractor. Unless otherwise provided by the Contract, upon completion of all the Work required to be completed by the Contract Documents and issuance of a Certificate of Final Completion by the Architect of Record, the Authority shall process final payment to the Contractor in accordance with the procedures set forth in the Contract Documents.

## SECTION XI NOTICES

11.1 Notices to Parties. Any notice, certificate or other communication provided pursuant to this Agreement shall be in writing and shall be mailed, postage prepaid by

registered or certified mail with return receipt requested, or hand delivered and receipted, as follows:

If to the City: Commissioner  
Department of Housing and Economic  
Development  
City of Chicago  
121 North LaSalle Street  
Room 1000, City Hall  
Chicago, Illinois 60602

Budget Director  
Office of Management and Budget  
City of Chicago  
121 North LaSalle Street  
Room 604, City Hall  
Chicago, Illinois 60602

And the CDOT  
Representative:

Commissioner  
Department of Transportation  
City of Chicago  
30 North LaSalle Street – Suite 1100  
Chicago, Illinois 60602

with a copy to:

Corporation Counsel  
Department of Law  
City of Chicago  
121 North LaSalle Street  
Room 600, City Hall  
Chicago, Illinois 60602  
Attn: Finance and Economic Development Division

If to the Authority:

Chief Executive Officer  
Metropolitan Pier and Exposition Authority  
301 East Cermak Road  
Chicago, Illinois 60616-2421

with a copy to:

General Counsel  
Metropolitan Pier and Exposition Authority  
301 East Cermak Road  
Chicago, Illinois 60616-2421

Notices are deemed to have been received by the parties three (3) days after mailing (return receipt) or upon receipt if hand delivered.

11.2 Changes. The parties, by notice given hereunder, may designate any further or different addressee or addresses to which subsequent notices, certificates or other communications shall be sent.

## SECTION XII MISCELLANEOUS PROVISIONS



12.1 Entire Agreement; Amendment. Except as otherwise provided herein, this Agreement contains the entire agreement of the parties with respect to the subject matter herein and supersedes all prior agreements, negotiations and discussions with respect thereto, and shall not be modified, amended or changed in any manner whatsoever except by mutual consent of the parties as reflected by written instrument executed by the parties hereto.

12.2 Conflict of Interest. No member of any agency, board, commission or department of the City nor any official or employee of the City or the Authority shall have any financial or ownership interest, direct or indirect, in the Site or any Contract; nor shall any such member, official or employee participate in any decision which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No representative of the City or the Authority shall be personally liable for the performance of the City or the Authority of the terms and conditions of this Agreement.

12.3 Mutual Assistance. The parties agree to perform their respective obligations, including the execution and delivery of any documents, instruments and certificates, as may be necessary or appropriate, consistent with the terms and provisions of this Agreement.

12.4 Disclaimer. No provision of this Agreement, nor any act of the City or the Authority shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City or the Authority.

12.5 Headings. The headings of the various sections and subsections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

12.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

12.7 Successors and Assigns. The terms of this Agreement shall be binding upon the City and the Authority. None of the rights, duties or obligations under this Agreement may be assigned without the express written consent of the parties except as otherwise provided in this Agreement.

12.8 Severability. If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance, is held invalid, the remainder of this Agreement shall be construed as if such invalid part were not included herein and the remainder of the terms of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.9 Counterparts. This Agreement shall be executed in several counterparts, each of which shall constitute an original instrument.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Intergovernmental Agreement between the City of Chicago and the Metropolitan Pier and Exposition Authority regarding the Cermak Road Streetscape to be executed, all as of the date first written above.

CITY OF CHICAGO

By: \_\_\_\_\_  
Commissioner  
Department of Housing and Economic Development

METROPOLITAN PIER AND EXPOSITION AUTHORITY OF CHICAGO

By: \_\_\_\_\_  
Chief Executive Officer

EXHIBIT A  
THE PROJECT  
(Cermak Road Streetscape)

Construction

New concrete curb & gutter

New Sidewalk - Brick on concrete base with metal edging both sides

New Sidewalk - Brick as above - East Side of Sculpture

Demolish existing concrete sidewalk in front of ABC

Building

Install new concrete sidewalk in front of ABC building

Remove and Re-install bus shelter (by DeCaux) Includes foundation & Electrical

New curb splash strip - Brick on concrete base with metal edging one side

New foundation for relocated metal sculpture

New foundation for relocated concrete bench

New metal sidewalk protection bollards

Relocate sculpture lighting using existing power supply

Relocate sculptures

Landscaping & Irrigation

New grass parkway - sod, soil prep, irrigation

New street trees

Reconfigure soil berm under steel structure

Relocate existing plant materials around sculpture

Add 8' high metal/pvc privacy fence at ABC parking lot

EXHIBIT B  
BUDGET  
(Cermak Road Streetscape)

(See Attachment)

**MPEA**

rev 5/10/2013

**Cermak/MLK/ Calumet Intersection Streetscape Improvements**

Construction	Width Unit	Length Unit	Area Unit	Unit Cost	Total
New concrete curb & gutter	8'-6" FT	170 LF	170 LF	\$8	\$1,360.00
New Sidewalk - Brick on concrete base with metal edging both sides	8'-6" FT	610 LF	5185 SF	\$7	\$36,295.00
New Sidewalk - Brick as above - East Side of Sculpture	6'-0" FT	115 LF	690 SF	\$12	\$8,280.00
Demolish exist. Concrete sidewalk in front of ABC Building	28' FT	195 LF	5460 SF	\$3	\$16,380.00
Install new concrete sidewalk in front of ABC building	9' FT	150 LF	1350 SF	\$6	\$8,100.00
Remove and Re-install bus shelter (by DeCaux) Includes foundation & Electrical					\$5,000.00
New curb splash strip - Brick on concrete base with metal edging one side	1'-4" FT	520 LF	693 SF	\$12	\$8,317.92
New foundation for relocated metal sculpture		1	1 allow	\$20,000	\$20,000.00
New foundation for relocated concrete bench		1	1 allow	\$2,500	\$2,500.00
New metal sidewalk protection bollards		14 EA.	14 EA.		\$30,800.00
		14 EA.	14 EA.	\$2,200	\$30,800.00
		14 EA.	14 EA.	\$500	\$7,000.00
		6 EA.	6 EA.	\$1,500	\$9,000.00
Relocate sculpture lighting using existing power supply					\$20,000.00
Relocate sculptures		1	1 allow	\$20,000	\$20,000.00

<b>Landscaping &amp; Irrigation</b>					
New grass parkway - sod, soil prep, irrigation	8'-0"	500 LF	4000 SF	\$5	\$18,000.00
New street trees		9 EA.	9 EA.	\$2,600	\$23,400.00
Reconfigure soil berm under steel structure		1	1 Allow	\$5,000	\$5,000.00
Relocate existing plant materials around sculpture		1	1 Allow	\$5,000	\$5,000.00
Add 8' high metal/pvc privacy fence at ABC parking lot		180 LF	180 LF	\$75	\$13,500.00

<b>Soft Costs</b>					\$20,000.00
Landscape Design Fees					\$25,000.00
Civil Design Fees					\$20,000.00
Other Design / Approval Costs					\$10,000.00
<b>Sub Total</b>					\$312,932.92
<b>Contingency @ 15%</b>					\$46,939.94
<b>Grand Total</b>					\$359,872.86

EXHIBIT C-1  
NOTICE OF SUBSTANTIAL COMPLETION

Date:

Name:

Commissioner  
City of Chicago  
Dept. of Transportation  
30 North LaSalle Street, Suite 1100  
Chicago, IL 60602

Re:

Dear Commissioner:

Enclosed please find a Certificate of Substantial Completion as issued by the Architect of Record, a copy of the Punch List, and a letter from the independent Commissioning agent certifying that all systems are operating as designed.

The Metropolitan Pier and Exposition Authority is in the process of completing the remaining punch list work. Copies of all warranties, operations/maintenance manuals and as-built drawings are currently being assembled and will be transmitted to you upon Final Completion of the Project. Training of Department of Transportation staff has been completed, all keys have been turned over, and draft copies of warranties and operation/maintenance manuals have been provided to the CDOT building engineer.

Please confirm your acceptance of the Project by signing in the space provided below and returning a copy of this letter to the attention of the Chief Executive Officer.

Please contact the writer at (312) \_\_\_\_\_ should you have any questions.

Very truly yours,

Metropolitan Pier and Exposition Authority of Chicago

MPEA Project Manager

Enclosure

ACCEPTED BY:

\_\_\_\_\_  
Commissioner, Department of Transportation

\_\_\_\_\_  
Date

EXHIBIT C-2  
CERTIFICATE OF FINAL ACCEPTANCE

Date:

Name:

Title:

City of Chicago

Dept. of Transportation

30 North LaSalle Street, Suite 1100

Chicago, IL 60602

Project Name and Number: \_\_\_\_\_

Dear \_\_\_\_\_:

Enclosed please find a Certificate of Final Completion as issued by the Architect of Record, along with a final occupancy certifications for the above-referenced Project.

The Metropolitan Pier and Exposition Authority has verified that all punch list work has been completed. Copies of all warranties, operations/maintenance manuals and as-built drawings are transmitted to you concurrently with this certificate.

Please confirm your acceptance of the Project by signing in the space provided below and returning a copy of this letter to the attention of the Chief Executive Officer.

Please contact the writer at (312) \_\_\_\_\_ should you have any questions.

Very truly yours,

Metropolitan Pier and Exposition Authority of Chicago

MPEA Project Manager

Enclosure

ACCEPTED BY:

\_\_\_\_\_  
Commissioner, Department of Transportation

\_\_\_\_\_  
Date

## EXHIBIT D COPYRIGHT PROVISIONS

The parties intend and agree that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by the Architect and its sub-consultants pursuant to this Agreement (the "Work") shall conclusively be deemed works made for hire within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. 101 *et seq.*, and that the Authority, the City and CDOT (the City and CDOT collectively referred to in this Exhibit D as the "User Agency") and their successors and assigns, will be the copyright owner of all aspects, elements and components thereof in which copyrights can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire," the Architect hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Authority and the User Agency and their successors and assigns, all right, title, and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals thereof, and all other intangible, intellectual property embodied in or pertaining to the Work contracted for under the Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. The Architect will execute all documents and, at the expense of the Authority, perform all acts that the Authority may reasonably request in order to assist the Authority and the User Agency and their successors and assigns, in perfecting their rights in and to the copyrights relating to the Work.

The Architect warrants to the Authority and the User Agency and their successors and assigns, that (1) the Work constitutes a work of authorship; (2) on the date hereof the Architect is the lawful owner of good and marketable title in and to the copyrights for the Work (including the copyrights on designs and plans relating to the Work); (3) the Architect has the legal right to fully assign any such copyright with respect to the Work; (4) the Architect has not assigned any copyrights nor granted any licenses, exclusive or non-exclusive, to any other party; (5) the Architect is not a party to any other agreement or subject to any other restrictions with respect to the Work; and (6) the plans and designs for the Work will, upon completion of the Services be complete, entire and comprehensive. Further, the Architect agrees that it will not restrict or otherwise interfere with the Authority's and/or the User Agency's future actions in authorizing the use, adaptation, revision, or modification or destruction of the Work provided that the Architect is indemnified for any damages resulting from any such future re-use or adaptation of the Work as may be authorized by the Authority or by the User Agency, as applicable.



EXHIBIT E  
INSURANCE REQUIREMENTS

City of Chicago  
Contract Insurance Requirements

The Contractor must provide and maintain at Contractor's own expense, until Contract completion and during the time period following final completion if Contractor is required to return and perform any additional work, the minimum insurance coverages and requirements specified below, insuring all operations related to the Contract.

INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

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

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. Coverages must include the following: All premises and operations, products/completed operations, (for minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Metropolitan Pier and Exposition Authority and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

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

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 Contractor must provide Automobile Liability Insurance, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The Metropolitan Pier and Exposition Authority and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis.

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

4) Contractors Pollution Liability

When any work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than \$2,000,000 per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an

extended reporting period of two (2) years. The Metropolitan Pier and Exposition Authority and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis.

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

5) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

6) Builders Risk

When Contractor undertakes any construction, including improvements, betterments, and/or repairs, the Contractor must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must include but are not limited to the following: right to partial occupancy, collapse, water including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, faulty workmanship or materials, mechanical-electrical breakdown, testing, and equipment stored off site or in transit. The Metropolitan Pier and Exposition Authority and the City of Chicago are to be named as additional insureds and loss payees

The Contractor is responsible for all loss or damage to Authority and/or City property at full replacement cost.

The Contractor 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 Contractor.

7) Railroad Protective Liability

When any work is to be done, adjacent to or on railroad or transit property, Contractor must provide, with respect to the operations that Contractor or subcontractors perform, Railroad Protective Liability Insurance in the named of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

B. ADDITIONAL REQUIREMENTS

Contractor must furnish the Metropolitan Pier and Exposition Authority, 301 East Cermak Road, Chicago, Illinois 60616-2421, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this

Contract. The Contractor must submit evidence of insurance to the Metropolitan Pier and Exposition Authority prior to Contract award. The receipt of any certificate does not constitute agreement by the Authority that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the Authority to obtain certificates or other insurance evidence from Contractor is not a waiver by the Authority of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor shall advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Contract, and the Authority retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The Authority and/or City of Chicago reserve the right to obtain copies of insurance policies and records from the Contractor and/or its subcontractors at any time upon written request.

The insurance must provide for sixty (60) days prior written notice to be given to the Authority in the event coverage is substantially changed, canceled, or non-renewed.

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

The Contractor agrees that insurers waive their rights of subrogation against the Metropolitan Pier and Exposition Authority, its employees, elected officials, agents, or representatives and the City of Chicago.

The coverage and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self-insurance programs maintained by the Authority and City of Chicago do not contribute with insurance provided by the Contractor under the Contract.

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

If contractor is a joint venture, the insurance policies must name the joint venture as a named insured.

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

If Contractor or subcontractor desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

The Metropolitan Pier and Exposition Authority maintains the rights to modify, delete, alter or change these requirements.

Original Sent for  
Mayer's Signature

APPROVED  
*Paul R. Palk*  
CORPORATION COUNSEL

APPROVED  
*Robert Emmett Spill*  
7/1/13  
Mayor