



WHEREAS, pursuant to that certain Memorandum of Understanding between the City, acting through the Department of Innovation and Technology ("DoIT"), and CCF dated January 4, 2010, the City is a member of the advisory committee of Smart Chicago (the "Smart Chicago Advisory Committee"); and WHEREAS, CCF desires to grant to the City an amount not to exceed \$150,000 (the "Grant") for payment of the City's \$150,000 participation fee pursuant to the CFA Contract (the "Participation Fee"); and WHEREAS, CCF also desires to pay at least \$150,000 (the "Match") directly to CFA for Program costs pursuant to the CFA Contract (the "Program Fee"); and WHEREAS, pursuant to a proposed agreement between CCF and the City (the "CCF Grant Agreement,, the substantially final form of which is attached hereto as Exhibit 2 and hereby incorporated herein) CCF agrees to make the Grant funds available to the City by directly paying the Program Fee to CFA and to pay the Match to CFA for the Program Fee; and WHEREAS, although the City is a member of the Smart Chicago Advisory Committee the City has recused itself from and has not taken part in and shall not take part in any decision of or action by the Smart Chicago Advisory Committee or CCF regarding the award or administration of the Grant; now, therefore, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

Section 1. The above recitals are incorporated herein by this reference.

Section 2. The Chief Information Officer of DoIT (the "CIO") or the CIO's designee (in either case, the "Authorized Officer") is authorized to execute the CFA Contract and the CCF Grant Agreement (together, the "Agreements") in substantially the forms attached hereto as Exhibits 1 and

1  
2, respectively, and to perform any and all acts as shall be necessary or advisable in connection with the City's performance under the Agreements. The Agreements shall contain such other terms as the Authorized Officer deems necessary or appropriate. The Authorized Officer is authorized to accept grants-in-kind on behalf of the City for travel and/or lodging in order for the City to attend and participate in Program events hosted by CFA.

Section 3. 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 control. 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 4. . This Ordinance takes effect upon passage and approval.

2  
EXHIBIT 1 CFA CONTRACT (see attached)

3  
**PROFESSIONAL SERVICES AGREEMENT**

BETWEEN  
THE CITY OF CHICAGO DEPARTMENT OF INFORMATION & TECHNOLOGY 311 SERVICES  
AND  
CODE FOR AMERICA LABS, INC. >

OPEN-SOURCE SOFTWARE FOR 311 SERVICE  
RAHM EMANUEL MAYOR

4  
**AGREEMENT**

This Agreement is entered into as of the     ■\_day of\_,  
' ("Effective Date") by and between Code For America Labs, Inc., a California corporation ("Consultant"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Information and Technology ("City"), at Chicago, Illinois. The City and Consultant agree as follows:

**BACKGROUND INFORMATION**

Consultant is a non-profit organization that operates a Fellowship Program for web developers, web designers, and other individuals in related fields to provide lightweight creative technologies for the benefit of municipalities. The Fellows are provided training and a stipend, the municipalities receive

the benefit of a software solution to some information technology problem they may have. The City applied to participate in Consultant's Fellowship Program for 2012, suggesting that Consultant's Fellows could assist the City by creating an Open Source interface for the City's 311 program. The City has been accepted as a participating municipality in Consultant's program. The City has or will enter into a separate agreement with a Grantor, The Chicago Community Foundation as trustee of the Smart Chicago Trust Fund, which has agreed to pay Consultant's \$150,000 "Participation Fee" on behalf of the City. It is intended that Grantor will make payments to Consultant directly.

The Consultant warrants that it is ready, willing and able to perform as of the effective date of this Agreement to the full satisfaction of the City.

NOW, THEREFORE, the City and the Consultant agree as follows:

## **ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION**

The Background Information set forth above is incorporated and made a part of this Agreement by reference.

## **ARTICLE 2. TERMS AND CONDITIONS 2.1 Definitions**

The following words and phrases have the following meanings for purposes of this Agreement:

5

"Additional Services" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 3.1, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 10.3 of this Agreement before Consultant is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"Agreement" means this Professional Services Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his behalf.

"Commissioner" means the Commissioner of the Department of Innovation and Technology, and any representative authorized in writing to act on the Commissioner's behalf.

"Department" means the City Department of Innovation and Technology.

"Fellowship Program" means the program operated by Consultant in which various individuals receive training, networking opportunities, and a stipend while working on Open Source software projects, under the supervision of other employees of Consultant, for municipalities participating in the program. "Fellow" or "CFA Fellow" means a person participating in the Fellowship Program. CFA Fellows are considered employees of Consultant.

"Open Source Software" means software that consists of, contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software, or pursuant to similar licensing and distribution models (e.g., GNU, Linux, Mozilla Public License, the Apache Software License, etc.).

) "Services" means, collectively, the services, duties and responsibilities described in Article 3 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subcontractor" means any person or entity with whom Consultant contracts to provide any part of the Services, including subcontractors and subconsultants of any tier, suppliers and materials providers, whether or not in privity with Consultant.

6

## **2.2**

## Interpretation

- (a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.
- (b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- (c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- (e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- (f) All references to a number of days mean calendar days, unless indicated otherwise.

### 2.3 Incorporation of Exhibits

The following attached Exhibits are made a part of this Agreement:

Exhibit 1 Scope of Services, Time Limits for Performance

*Exhibit 2 Intentionally omitted*

*Exhibit 3' Intentionally omitted*

Exhibit 4 Online Economic Disclosure Statement and Affidavit  
Certificate of Filing

Exhibit 5 Insurance Requirements and Evidence of Insurance

*Exhibit 6 Intentionally omitted*

*Exhibit 7 Intentionally omitted*

*Exhibit 8 Intentionally omitted*

## ARTICLE 3. DUTIES AND RESPONSIBILITIES OF CONSULTANT

### 3.1 Scope of Services

7

This description of Services is intended to be general in nature and is neither a complete description of Consultant's Services nor a limitation on the Services that Consultant is to provide under this Agreement. Generally, Consultant will implement an open-source interfaces for the City's 311 service, utilizing Open311, and will create one or more applications using that interface. Consultant must provide the Services in accordance with the standards of performance set forth in Section 3.3. The Services that Consultant must provide are described more fully in Exhibit 1. Scope of Services and Time Limits for Performance.

The parties may agree to written amendments to the Scope of Services. The Commissioner may execute such amendments on behalf of the City.

### 3.2 Deliverables

In carrying out its Services, Consultant must prepare or provide to the City various Deliverables.

"Deliverables" include work product, such as software source code, written reviews, recommendations, reports and analyses, produced by Consultant for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Consultant has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Consultant of its failure. If Consultant does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 9.1.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and

well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Consultant of its obligations under this Agreement.

### **3.3 Standard of Performance**

Consultant must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Consultant acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Consultant agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or Deliverables or payment for any of the Services by the City does not relieve Consultant of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Consultant under this Agreement, at law or in equity.

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/ Consultant remains responsible for the professional and technical accuracy of all Services or Deliverables furnished,, whether by Consultant or its Subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Agreement.

If the City determines that Consultant has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Consultant of its failure. If Consultant does not correct the failure within 30 days after receipt of notice from the City specifying the failure, or such longer period as the City may specify, then the City, by written notice, may treat the failure as a default of this Agreement under Section 9.1.

If Consultant fails to comply with the foregoing standards, Consultant must, at the City's option, perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure.

### **3.4 Personnel**

Consultant must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, and qualified. Consultant must include among its staff at least {To be provided later} CFA Fellows exclusively assigned to perform the Services, or the equivalent, unless otherwise directed in writing by the Commissioner.

The Consultant must employ only competent and efficient persons and whenever, in the opinion of the Commissioner, any such of Consultant's employees are careless, incompetent, or violate safety or security rules the Consultant must, upon request of the Commissioner, remove or reassign such employee. The Consultant must not permit any employee to enter City property who is under the influence of intoxicating liquors or controlled substances.

Intentionally omitted. 3.6 Insurance

Consultant must provide and maintain at Consultant's own expense, during the term of this Agreement and any time period following expiration if Consultant is required

9  
to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 5 of this Agreement, insuring all operations related to this Agreement.

### **3.7 Indemnification**

(a) Consultant must defend, indemnify, and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses related

to:

(i) injury, death or damage of or to any person or property;  
(ii) any infringement or violation of any property right (including any patent, trademark or copyright);  
(iii) Consultant's failure to perform or cause to be performed Consultant's promises and obligations as and when required under this Agreement, including Consultant's failure to perform its obligations to any Subcontractor;

(iv) injuries to or death of any employee of Consultant or any Subcontractor under any workers compensation statute. However, Consultant will not be required to indemnify the City under a workers compensation statute for injuries to or death of Fellows While working under the direct supervision and control of City personnel, while physically within the City limits on public or City property.

(b) "Losses" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Consultant's breach of this Agreement or to Consultant's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.

(c) At the City Corporation Counsel's option, Consultant must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Consultant of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

(d) To the extent permissible by law, Contractor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums

10

due under any Losses resulting from any claim by any employee of Contractor, including any such limit arising under the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as Koteckhv. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)), or out of any collective bargaining agreement or employment contract. The City, however, does not waive any limit it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

(e) Notwithstanding 3.7(a)(ii) above, Consultant will not will any indemnification obligations with respect to infringement or misappropriation Losses arising from (i) modifications to any Consultant Deliverables by any party other than Consultant or its Subcontractors; (ii) the use of any Consultant Deliverables in combination with products or technology not provided by Consultant; or (iv) the City's failure to implement a revision to the Consultant Deliverables, which if implemented, would have avoided the infringement or misappropriation.

(f) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during Consultant's performance of Services beyond the term. Consultant acknowledges that the requirements set forth in this section to defend, indemnify, and hold harmless the City are apart from and not limited by the Consultant's duties under this Agreement, including the insurance requirements in Exhibit 5 of this Agreement.

(g) Except with respect to intellectual property or confidentiality matters, neither party will be liable to the other party for any general, consequential, incidental, special, or punitive damages arising out of or in connection with the Services, even if such party has been advised of the possibility of such damages. ,

(h) Except for property damage (including intellectual property matters), confidentiality, or personal injury, Consultant's liability will be limited to \$300,000 plus the amount of any insurance proceeds. Consultant will not be liable for damage directly caused by an action of Consultant's employee if that

action was taken at the express direction of an authorized representative of the City. The City has no obligations with respect to the Participation Fee to be paid by Grantor. Under no circumstances will City liability for any matter relating to this Agreement exceed \$300,000.

### **3.8 Ownership of Documents**

All data, findings or information in any form prepared, assembled or encountered by or provided to Consultant under this Agreement will be property of the City, notwithstanding the Open Source licensing policy stated below. During performance of its Services, Consultant is responsible for any loss or damage to the data, findings or information while in Consultant's or any Subcontractor's possession. Any such lost or damaged data, findings or information must be restored at the expense of Consultant. If

n

not restorable, Consultant must bear the cost of replacement and of any loss suffered by the City on account of the destruction.

With respect to Deliverables which consist of Open Source Software prepared by Consultant under this Agreement, the City's use of those Deliverables will be subject to Open Source Software license terms. Consultant will provide the City with the version of the Open Source Software license terms that are applicable to any Deliverables. Such license must be acceptable to the Commissioner and must permit the City to modify the Deliverables and make commercial use of the Deliverables. To the extent any Consultant software Deliverables under the program cannot be subject to an Open Source Software license, Consultant will own all rights in and to, including the right to license to others rights to Software Deliverables prepared under the Agreement; provided, however, Consultant shall provide the City of Chicago a non-exclusive, worldwide, non-royalty bearing, irrevocable license to use such Deliverables in perpetuity, which may be transferred to any successor of the City without consent of Consultant. Consultant must explicitly identify any Deliverables not subject to Open Source license terms and explain to the satisfaction of the Commissioner the circumstances requiring their incorporation into the Deliverables.

### **3.9**

*Intentionally omitted.*

### **3.10 Records**

Consultant must maintain records relating to the Agreement including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement.

### **3.11 Confidentiality**

(a) With the exception of software prepared by Consultant, all Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Consultant under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Consultant must not allow the Deliverables, including software, to be made available to any other individual or organization without the prior written consent of the City. With respect to Open Source software, however, such consent shall not be required, but the City's name may not be used in connection with such software without consent of the City. Further, all documents and other information provided to Consultant by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Consultant must implement such measures as may be necessary to ensure that its staff and its

12

Subcontractors are bound by the confidentiality provisions in this Agreement. Consent may be provided through blanket approvals by the Commissioner as he deems appropriate.

(b) Consultant must not issue any publicity news releases without first providing written notification to the Commissioner, allowing a reasonable time for approval. However, such notice will not be required

where the reference to the City is general, as one of the participants in Consultant's Fellowship Program.

(c) If Consultant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Consultant's possession by reason of this Agreement, Consultant must immediately give notice to the Commissioner and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Consultant, however, is not obligated to withhold the delivery beyond the time ordered' by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(d) HIPAA and AIDS Confidentiality Act. To the extent not defined here the capitalized terms below will have the same meaning as set forth in the Health Insurance Portability and Accountability Act (Act). See 45 CFR parts 160, 162 and 164. Consultant and all its Subcontractors must comply with the Act and all rules and regulations applicable to it including the Privacy Rule, which sets forth the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164 subparts A and E; the Standards for Electronic Transactions, which are located at 45 CFR parts 160 and 162 and the Security Standards, which are located at 45 CFR parts 160, 162 and 164. Consultant must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16) and the rules and regulations of the Illinois Department of Public Health promulgated under it. If Consultant fails to comply with the applicable provisions under the ACT or the Illinois AIDS Confidentiality Act, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be provided. .

(e) With respect to any information supplied in connection with this Agreement and designated in writing by the delivering party as confidential, the receiving party agrees to: (i) protect the confidential information in a reasonable and appropriate manner; and (ii) use confidential information only to perform its obligations under the Agreement. This confidentiality obligation shall not apply to information that is: (a) publicly known; (b) already known to the recipient; (c) disclosed to a third party without restriction; (d) independently developed; or (e) disclosed pursuant to a legal requirement or order.

13

### **3.12 Transferability**

Neither Party shall be permitted to assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the other Party hereto.

## **ARTICLE 4. DURATION OF AGREEMENT**

### **4.1 Term of Performance**

This Agreement takes effect as of the Effective Date and continues, except as provided under Sections 5.4 or Article 9, until \_\_\_\_. However, the Commissioner may extend the term of the agreement to allow for completion of the Services if he determines that such extension is in the best interest of the City.

### **4.2 Timeliness of Performance**

(a) Consultant must provide the Services and Deliverables within the time limits described in Exhibit 1. Further, Consultant acknowledges that TIME IS OF THE ESSENCE and that the failure of Consultant to comply with the required time limits may result in economic or other losses to the City.

(b) Neither Consultant nor Consultant's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Consultant by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

(c) Force Majeure. Neither party shall be liable for any delays or failures in performance due to

circumstances beyond its reasonable control.

**ARTICLE 5. COMPENSATION 5.1 Basis of Payment**

Consultant's Participation Fee will be paid by Grantor for the performance of the Services in accordance with this Agreement, including the standard of performance in Section 3.3, as follows:

1. \$50,000 on November 1, 2011
2. \$50,000 on February 1, 2012
3. \$50,000 on May 1, 2012

Total compensation to Consultant will not exceed \$150,000. Consultant agrees

14 that this includes all direct, indirect, and overhead costs, including travel and living expenses, incurred by Consultant in the course of performing the Services.

**5.2 Method of Payment**

{To be determined}

**5.3 Funding**

The source of funds for payments under this\* Agreement will be a grant provided by Grantor. Under no circumstances will payments under this Agreement exceed \$150,000 without a written amendment in accordance with Section 10.3. Funding for this Agreement is subject to the availability of funds and, if to be administered by the City rather than Grantor, their appropriation by the City Council of the City. Consultant understands that the City has no funds to pay for the Services under the Agreement and agrees that its sole recourse in the event of non-payment by Grantor is, to suspend the Services until payment is received or terminate the agreement. Consultant agrees that in the event of termination for non-payment by Grantor or the City, no funds will be due or made to Consultant other than those already received by Consultant.

**5.4 Non-Appropriation**

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, and the City learns that Grantor will not make the payments to be made under this Agreement, then the City will notify Consultant in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments will be made or due to Consultant by the City under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement, and no payments will be made or due to Consultant by Grantor beyond \$150,000.

**ARTICLE 6.**

*Intentionally omitted.*

**ARTICLE 7. COMPLIANCE WITH ALL LAWS , 7.1 Compliance with All Laws Generally**

(a) Consultant must observe and comply with all applicable federal, state,

15

county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 7, and Consultant must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Consultant must require all Subcontractors to do so, also. Further, Consultant must execute an online Economic Disclosure Statement and Affidavit ("EDS") which includes a Disclosure of Retained Parties. Submit an electronically signed, one page Certificate of Filing to Exhibit 4 which validates that the EDS has been filed. The web address to submit your EDS is <<http://webapps.cityofchicago.org/EDSWeb>>. Notwithstanding acceptance by the City of the EDS, Consultant's failure in the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Consultant must promptly update its online EDS(s) with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate.

(b) Notwithstanding anything in this Agreement to the contrary; references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(c) The Consultant will comply with Section 2-154-020 of the Municipal Code of Chicago. Failure by the Consultant or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of this Agreement.

## **7.2 Nondiscrimination (A) Consultant**

Consultant must comply with applicable federal, state, and local laws and related regulations prohibiting discrimination against individuals and groups.

### **(i) Federal Requirements**

Consultant must not engage in unlawful employment practices, such as

(1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or

(2) limiting, segregating or classifying Consultant's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age,

16

handicap/disability or national origin.

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 et seq.; 41 C.F.R. Part 60 et seq. (1990); and all other applicable federal statutes, regulations and other laws.

### **(ii) State Requirements**

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A.

Furthermore, Consultant must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and all other applicable state statutes, regulations and other laws.

### **(iii) City Requirements**

Consultant must comply with, and the procedures Consultant utilizes and the Services Consultant provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 et seq. of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules.

## **(B) Subcontractors**

Consultant must incorporate all of this Section 7.2 by reference in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations

that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement. Further, Consultant must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the federal, state, and local agencies charged with enforcing such laws and regulations, including the Chicago Commission on Human Relations,

17

### **7.3 Inspector General and Legislative Inspector General**

It is the duty of any bidder, proposer or Consultant, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Consultant, Subcontractor or such applicant to cooperate with the Inspector General or Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 or 2-55, respectively, of the Municipal Code. Consultant understands and will abide by all provisions of Chapter 2-56 and 2-55 of the Municipal Code. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

### **7.4 Office of Compliance**

It is the duty of any bidder, proposer, Consultant, Contractor, all Subcontractors, and every applicant for certification of eligibility for a City Agreement or program, and all officers, directors, agents, partners and employees of any bidder, proposer, consultant or such applicant to cooperate with the Office of Compliance in any investigation or audit pursuant to Chapter 2-26 of the Municipal Code of Chicago. The Consultant understands and will abide by all provisions of Chapter 2-26 of the Municipal Code of Chicago. All subcontracts will inform Subcontractors of this provision and require understanding and compliance with it.

### **7.5**

*Intentionally omitted.*

### **7.6 Business Relationships with Elected Officials**

Pursuant to § 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement. The term business relationship is defined as set forth in § 2-156-080 of the Municipal Code.

Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a

18

corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

**7.7**

Intentionally omitted. 7.8

*Intentionally omitted.*

**7.9 Prohibition on Certain Contributions**

Consultant agrees that Consultant, any person or entity who directly or indirectly has an ownership or beneficial interest in Consultant of more than 7.5 percent ("Owners"), spouses and ^ domestic partners of such Owners, Contractor's subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Consultant and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago ("Mayor") or to his political fundraising committee (i) after execution of this Agreement by Consultant, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Consultant and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Consultant represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Consultant or the date Consultant approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Consultant agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political

19

fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Consultant agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 11-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 11-4.

Consultant agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 11-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Consultant violates this provision or Mayoral Executive Order No. 11-4 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Contractor's bid. <

For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Consultant is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

20  
each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and two of the following four conditions exist for the partners:

1. The partners have been residing together for at least 12 months.
2. The partners have common or joint ownership of a residence.
3. The partners have at least two of the following arrangements:
  - a. joint ownership of a motor vehicle; ' b. a joint credit account;
  - c. a joint checking account;
  - d. a lease for a residence identifying both domestic partners as tenants.
4. Each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended."

## 7.10

### **Intentionally omitted. 7.11 Deemed Inclusion**

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. If the City becomes aware of new provisions required to be inserted into this agreement by new laws, ordinances, rules, regulations, or executive orders, the City will notify Consultant. Any terms of the Agreement affected by provisions required to be inserted but not appearing in the Agreement at the time of execution may be amended by mutual agreement of the parties.

### **ARTICLE 8. SPECIAL CONDITIONS 8.1 Warranties and Representations**

In connection with signing and carrying out this Agreement, Consultant:

(D)

(E)

21

(a) warrants that Consultant is appropriately licensed under Illinois law to , perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Consultant is not appropriately licensed;

(b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors of any tier are competent to perform the Services required under this Agreement; and Consultant is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;

(c) warrants that it will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of its Services under this Agreement;

(d) warrants that Consultant and its Subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City ;

(e) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; th'is Agreement is feasible of performance in accordance with all of its provisions and requirements, and Consultant warrants it can and will perform, or cause to be performed, the Services in strict accordance with the

provisions and requirements of this Agreement;

(f) represents that Consultant and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of § 2-92-320 of the Municipal Code, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;

(g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 9.2 and 9.3 of this Agreement; and

(h) warrants and represents that neither Consultant nor an Affiliate of Consultant (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by 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. "Affiliate of Consultant" means a person or entity that directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common

22.

control with Consultant. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity (either acting individually or acting jointly or in concert with others) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

(i) disclaims all warranties, express or implied, of merchantability or fitness for a particular purpose.

8.2 Ethics <

(a) In addition to the foregoing warranties and representations, Consultant warrants:

(i) no officer, agent or employee of the City is employed by Consultant or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code .

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to Consultant or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(b) Consultant further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City. -

### **8.3 Joint and Several Liability**

If Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Consultant is the joint and several obligation or undertaking of each such individual or other legal entity.

### **8.4 Business Documents**

At the request of the City, Consultant must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

23

### **8.5 Conflicts of Interest**

(a) No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from

it.

(b) Consultant represents that it, and to the best of its knowledge, its Subcontractors if any (Consultant and Subcontractors will be collectively referred to in this Section 8.5 as "Consulting Parties"), presently have no direct or indirect interest and will not acquire any direct or indirect interest in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(d) Further, Consulting Parties must not assign any person having any conflicting interest to perform any Services under this Agreement or have access to any confidential information, as described in Section 3.11 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Consulting Parties' services for others conflict with the Services that Consulting Parties are to render for the City under this Agreement, Consulting Parties must terminate such other services immediately upon request of the City.

#### **8.6 Non-Liability of Public Officials**

Consultant and any assignee or Subcontractor of Consultant must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

24

### **ARTICLE 9. DEFAULT, REMEDIES, AND TERMINATION**

#### **9.1 Events of Default Defined**

The following constitute events of default:

(a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Consultant to the City or by the City to the Consultant.

(b) Consultant's failure to perform any of its material obligations under this Agreement including but not limited to the following:

(i) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services and failure to cure after written notification by the City;

(ii) Failure to have and maintain all professional licenses required by law to perform the Services;

(iii) Failure to timely perform the Services and failure, to cure after written notification by the City;

(iv) Failure to perform the Services in a manner reasonably satisfactory to the Commissioner or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

(v) After written notification, failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;

(vi) Discontinuance of the Services for reasons within Consultant's reasonable control;

(vii) Failure to comply with Section 7.1 in the performance of the Agreement;

(viii) Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is knowingly no longer complete or accurate; and

25

(ix) Any other acts specifically stated in this Agreement as constituting an act of default.

(c) Consultant's violation of City ordinance(s) unrelated to performance under the Agreement such that, in the opinion of the Commissioner, indicates a willful or reckless disregard for City laws and regulations.

## 9.2 Remedies

(a) Notices. The occurrence of any event of default permits the City, at the City's sole option, to declare Consultant in default. The Commissioner will give Consultant an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days unless extended by the Commissioner, and which in no event such period of time will be less than 5 days. Whether to declare Consultant in default is within the sole reasonable discretion of the Commissioner.

The Commissioner will give Consultant written notice of the default, in the form of a cure notice ("Cure Notice"). The Commissioner may give a "Default Notice" if Consultant fails to effect a cure within the cure period given in a Cure Notice. If the Commissioner gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the Commissioner decides not to terminate, this decision will not preclude him from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. When a Default Notice with intent to terminate is given as provided in this Section 9.2 and Article 11, Commissioner must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City.

(b) Exercise of Remedies. After giving a Default Notice, the City may invoke any or all of the following remedies:

- (i) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
- (ii) The right of specific performance, an injunction- or any other appropriate equitable remedy;
- (iii) The right to money damages;
- (iv) The right to have withheld all or any part of Consultant's compensation under this Agreement;

26  
(v) The right to require the refund of some or all of the "Participation Fee."

(c) City's Reservation of Rights. If the Commissioner considers it to be in the City's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Consultant to continue to provide the Services despite one or more events of default, Consultant is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

(d) Non-Exclusivity of Remedies. The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

(e) Default by City. If the City materially breaches this Agreement and the breach remains uncured for more than thirty (30) days after written notice of the breach by Consultant to the City, Consultant may terminate the Agreement.

(f) If any of the payments for the \$150,000 Participation Fee are not paid for more than thirty (30) days after they are due, Consultant's sole recourse is to suspend the Services until payment is received or to terminate the agreement.

(g) In the event of termination for non-payment by Grantor or the City, or due to default by the City, Consultant will not be entitled to any funds or payment other than the amount already paid to and

received by Consultant. /

### **9.3 Early Termination**

(a) In addition to termination under Sections 9.1 and 9.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, by a notice in writing from the City to Consultant. The City will give notice to Consultant in accordance with the provisions of Article 11. The effective date of termination will be the date the notice is received by Consultant or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 10 days after the date the notice is considered received as provided under Article 11 of this Agreement (if no date is given) or upon the effective date stated in the notice.

27

(b) After the notice is received, Consultant must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun unless otherwise directed by the Commissioner. As payment of the "Participation Fee" is to be made in advance, the most Consultant will be entitled to for Services actually and satisfactorily performed will be the amount already paid. The payment so made to Consultant is in full settlement for all Services 'satisfactorily performed under this Agreement. However, Consultant agrees to refund the unearned portion of the "Participation Fee" already paid if the effective date of termination is prior to the Program Conference or September 30, 2012, whichever is earlier.

(c) If the City's election to terminate this Agreement for default under Sections 9.1 and 9.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 9.3. •

## **ARTICLE 10. GENERAL CONDITIONS 10.1 Entire Agreement**

### **(a) General**

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

### **(b) No Collateral Agreements**

Consultant acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Consultant to enter into this Agreement qj has been relied upon by Consultant, including any with reference to: (i) the meaning, correctness, suitability orj completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

28

### **(c) No Omissions**

Consultant acknowledges that Consultant was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Consultant did so review those documents, and either every such statement, representation, promise or provision has been included

in this Agreement or else, if omitted, Consultant relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

### **10.2 Counterparts**

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

### **10.3 Changes, Modifications, and Amendments**

No change, modification, or amendment of this Agreement, or any part hereof, is valid unless stipulated in writing and signed by the Comptroller and Commissioner. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 10.3.

However, a modification or amendment to extend the term of the Agreement, or otherwise modify the schedule, without providing for additional compensation, may be executed by the Commissioner alone.

### **10.4 Governing Law and Jurisdiction**

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Consultant irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Consultant may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Consultant, or by personal delivery on any officer, director, or managing or general agent of Consultant. If any action is brought by Consultant against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

29

### **10.5 Severability**

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

### **10.6 Assigns**

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

### **10.7 Cooperation**

Consultant must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Consultant must make every effort to ensure an orderly transition to another provider of the Services, if any, orderly demobilization, of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

### **10.8 Waiver**

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or

ordinance.

Whenever under this Agreement the City by a proper authority waives Consultant's performance in any respect or waives a requirement or condition to either the City's or Consultant's performance, the waiver so granted, whether express or implied, only applies to the particular instance and, is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Consultant in writing.

30

### **10.9 Independent Contractor**

(a) This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Consultant and the City. The rights and the obligations of the parties are only those set forth in this Agreement. Consultant must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) This Agreement is between the City and an independent contractor and, if Consultant is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

■. 'i  
(i) The City will not be liable under or by reason of this Agreement for the payment of any compensation award or damages in connection with the Consultant performing the Services required under this Agreement.

(ii) Consultant is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.

(iii) The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Consultant.

(c) Shakman Accord

(i) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Consultant is aware that City policy prohibits City employees from directing any individual to apply for a position with Consultant, either as an employee or as a subcontractor, and from directing Consultant to hire an individual as an employee or as a subcontractor. Accordingly, Consultant must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Consultant under this Agreement are employees or subcontractors of Consultant, not employees of the City of Chicago. This Agreement is not

31

( intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Consultant.

(iii) Consultant will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support,

activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or i parties or candidates for elected public office.

(iv) In the event of any communication to Consultant by a City employee or City official in violation of Section 10.9(c)(ii) above, or advocating a violation of Section 10.9(c)(iii) above, Consultant will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement.

**ARTICLE 11. NOTICES**

Notices provided for in this Agreement, unless provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the City: \_\_\_\_\_

Chicago, Illinois 60602 Attention: Commissioner  
and

With Copies to: Department of Law

32

Room 600, City Hall 121 North LaSalle Street Chicago, Illinois 60602 Attention: Corporation Counsel

If to Consultant: Code for America Labs, Inc.

85 Second Street, Suite 710

San Francisco, CA 94105

Attention: Meghan Reilly, Operations Director

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 11. Notices delivered by mail are considered received three days after mailing in accordance with this Article 11. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

**ARTICLE 12. AUTHORITY**

Execution of this Agreement by Consultant is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Consultant have been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

[Signature Pages; Exhibits and Schedules follow.]

33

CONTRACT SIGNATURE PAGE

CODE FOR AMERICA LABS, INC.

(Consultant)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date:

CITY OF CHICAGO

Commissioner, Department of Innovation & Technology Date

34

**EXHIBIT 1**

**SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE**

35

**Scope of Services and Time Limits for Performance**

Consultant will create an Open311 interface for the City's 311 Service and create at least one software application using that interface as a proof-of-concept, (the "Project.") An example of the sort of application that might be created would be an application that would allow members of the public to send photographs of potholes to the 311 Service by text message. At least one application must be functional to at least a beta test level by the time the Project is complete. At minimum, the application must support the full number of users ultimately anticipated to use the service and the core functions of the application must work under most circumstances, and documentation acceptable to the Commissioner must be provided.

**Personnel:**

Consultant will recruit "CFA Fellows," technologists who wish to give a year to public service as part of Consultant's Fellowship Program. Before putting the Fellows to work on the Project for the City as part of the Fellowship Program, Consultant will provide its Fellows with a one-month leadership training, "CFA Institute," regarding leadership and negotiation, the workings of local government, research methods, agile development practices, and innovative approaches to reform.

At least **■** CFA Fellows will be assigned to work on the Project for the City.

Consultant will provide a CFA Program Coordinator. The Program Coordinator will be the City's primary point of contact and will be responsible for planning and coordinating the brainstorm and Residency with City staff.

Consultant will provide a CFA Fellow Coordinator. The Fellow Coordinator will be the primary contact for Fellows throughout the Program and serve as the primary contact for the City of Chicago in all matters relating to Fellows.

Consultant will also provide Project Mentors who will supervise and guide the Fellows' work on the Project. / ..... ..

The City will designate a City Program Coordinator who will support the Fellows throughout the Project, and will participate in team meetings and other meetings, as needed. The City will also provide staff members as needed to work with Consultant's team. These staff members will coordinate necessary city resources and meetings, support the CFA Fellows, participate in brainstorming program solutions and participate in the hand-off of the project from Consultant to the City.

The City will also designate one or more individuals to participate as needed with Consultant's personnel in an oversight board that will supervise the Project and ensure that Consultant's work is meeting expectations. The oversight board is anticipated to meet by teleconference once every two weeks.

Consultant's personnel will participate in "Team Meetings" with the City at least once a week. The meetings may be conducted via teleconference and may occur more often than once a week during the Residency Period, described below.

**Schedule:**

The CFA Institute will take place in {to be finalized, currently expected to be January 2012}. If suitable funding is available to the City, the City will provide one or more people to participate in training the CFA Fellows at the CFA Institute. If funding is not available, Consultant may provide transportation and lodging for City personnel to enable their participation. Otherwise, the City will make a reasonable effort to participate remotely.

**36**

The CFA Fellows will work on-site at the City during the month of {to be finalized, currently expected to be February 2012}, the "Residency Period." The City will provide office space for the CFA Fellows to work. Living expenses, housing and transportation for the CFA Fellows and other Consultant personnel will be at Consultant expense even during the Residency Period. During the Residency Period, Consultant will plan, coordinate and lead a brainstorming session with city staff, Consultant staff, CFA Fellows, and industry leaders. The brainstorm session will create an opportunity to think more broadly about the program focus, discuss findings from the Residency and learn from the industry on how they might approach the problem.

From {to be finalized, currently expected to be March through September 2012}, the CFA Fellows and other Consultant personnel will work on the Project in San Francisco, the "Solution Building" phase. This phase will begin with an "Inception Event," a two-day project development kickoff. At the Inception Event, participants will explore goals, risks, users, roles, and use cases, and through a structured, proven process, will turn this information into a concrete product plan. It will include intensive workshops. Product features will be prioritized immediately and a concrete list of next steps will be outlined, allowing the entire team to begin delivering core product functionality. It will take place in San Francisco with CFA Fellows, Consultant staff, Project Mentors, and City personnel. If suitable funding is available to the City, the City will provide one or more people to participate onsite in the Inception Event. If funding is not available, Consultant may provide transportation and lodging for City personnel to enable their participation. Otherwise, the City will make a reasonable effort to participate remotely.

Team Meetings and meetings of the oversight board will continue throughout the Solution Building phase.

Consultant will conduct a Program Conference toward the end of the Solution Building phase, tentatively in September 2012. The conference will bring together city staff, Fellows, government partners, and industry leaders, to review the results of the Fellowship Program, suggest improvements and enhancements, and foster collaboration among the cities and reuse of software. If suitable funding is available to the City, the City will provide one or more people to participate onsite in the Program Conference. If funding is not available, Consultant may provide transportation and lodging for City

personnel to enable their participation. Otherwise, the City will make a reasonable effort to participate remotely.. Consultant will dedicate the last months of the Project, {to be finalized, currently expected to be October -November 2012} to wrap-up and hand off the solution to the City and work to ensure that the City will have the ability to maintain the Project software provided by Consultant. The deadline for completion will be November 30, 2012 unless otherwise directed by the Commissioner.

Projected Milestones	{All Dates to be Finalized}
2012 Fellowship Program Begins	January 2012
CfA Institute ~ /	January 2012
Residency	February 2012
r> Brainstorm Session/ -	Fe'brifi.2012 "
Solution Building	March 2012 - September 2012
-Program Conference -	
Wrap-Up and Hand Off	October - November 2012

tlrcfiirlgSII^^

37

#### EXHIBIT 4

#### ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT

{To Be Attached at Execution}

38

#### EXHIBIT 5 INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE

{Certificate to be attached at execution}

39

#### INSURANCE REQUIREMENTS

Consultant must provide and maintain at Consultant's own expense, during the term of the Agreement and time period following expiration if Consultant is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

##### A. 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 work under this Agreement and Employers Liability coverage with limits of not less than \$ 500,000 each accident, illness or disease.

###### 2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or Services.

###### 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 City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

##### B. ADDITIONAL REQUIREMENTS

Consultant must furnish the City of Chicago, Department of Innovation & Technology, Daley Center, Floor 27, 50 West Washington Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The receipt of

40

any certificate does not constitute agreement by the City 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 City to obtain certificates or other insurance evidence from Consultant is not a waiver by the City of any requirements for the Consultant to obtain and maintain the specified coverages. Consultant shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Consultant of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The Consultant must provide for 60 days prior written notice to be given to the City 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 Consultant.

Consultant hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished 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 City of Chicago 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 this Agreement given as a matter of law.

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.

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

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

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements. <sup>N</sup>

41

S:\SHARED\Finance\Gaynor <file:///S:/SHARED/Finance/Gaynor> New\Business & Information Services\Code for America\grant agr 6.doc

#### GRANT AGREEMENT BETWEEN THE CITY OF CHICAGO AND THE CHICAGO COMMUNITY FOUNDATION AS TRUSTEE OF THE SMART CHICAGO TRUST FUND REGARDING CODE FOR AMERICA

This Grant Agreement, made and entered into as of this \_\_\_ day of \_\_\_, 2011 (this "Agreement"), is by and between the City of Chicago (the "City"), acting through its Department of Innovation and Technology ("DoIT"), and The Chicago Community Foundation, an Illinois not-for-profit corporation, as trustee of the Smart Chicago Trust Fund (the "Grantor").

#### RECITALS

WHEREAS, the City is a municipal corporation and home rule unit of local government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, the Grantor is an Illinois not-for-profit corporation and an affiliate of The Chicago Community Trust; and

WHEREAS, the Smart Chicago Trust Fund ("Smart Chicago") is a component fund of the Grantor; and

WHEREAS, pursuant to that certain Memorandum of Understanding between the City and the Grantor dated January 4, 2010, the City is a member of the advisory committee of Smart Chicago (the "Smart Chicago Advisory Committee"); and

WHEREAS, pursuant to an agreement between Code for America Labs, Inc., a California corporation doing business as Code for America ("CFA"), and the City (the "CFA Contract," a copy of which is attached hereto as Exhibit 1 and hereby incorporated herein), CFA will build relationships with the City community, strengthen the City's network of civic resources, conduct research that informs and drives an information technology solution for the City, and ultimately provide the City' with lightweight, creative solutions (including an open source interface for the City's 311 program) that the City can sustain and grow on its own (the "Program"); and WHEREAS, the Grantor desires to grant to the City an amount not to exceed \$150,000 (the "Grant") for payment of the City's \$150,000 participation fee pursuant to the CFA Contract (the "Participation Fee"); and WHEREAS, the Grantor also desires to pay at least \$150,000 (the "Match") directly to CFA for Program costs pursuant to the CFA Contract (the "Program Fee"); and

WHEREAS, on\_, 2011, the City Council of the City adopted an ordinance approving, among other things, the receipt of the Grant and the execution of this Agreement (and of the CFA Contract); and

WHEREAS, under the terms and conditions hereof, the Grantor agrees to make the Grant funds available to the City by directly paying the Program Fee to CFA and to pay the Match to CFA for the Program Fee; and  
43

WHEREAS, the City and the Grantor have among their powers the authority to contract with each other to perform the undertakings described herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

#### SECTION 1. INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated herein by reference and made a part hereof.

#### SECTION 2. GRANT AND MATCH

Subject to the provisions in this Agreement, unless the City notifies and directs the Grantor to the contrary, the Grantor shall (a) make the Grant available to the City by directly paying the Participation Fee to CFA pursuant to the provisions of the CFA Contract (including but not limited to Section 5.1 thereof), and (b) pay the Match to CFA for the Program Fee. The Grantor shall provide the City with proof of payment of the foregoing amounts.

#### SECTION 3. COVENANTS AND REPRESENTATIONS

3.1 The City covenants that it shall promptly provide the Grantor with copies of all notices the City gives or receives under the CFA Contract.

3.2 The City represents that it has funds available to pay any and all costs under the CFA Contract over and above the Participation Fee, including any amounts owed to CFA, excluding the Program Fee.

3.3 The City covenants that, subject to CFA's performance under the CFA Contract, it will perform its obligations under the CFA Contract.

3.4 The City covenants that if the CFA Contract is terminated according to its terms then the Grantor will not be obligated to make any further disbursements of Grant funds.

3.5 The City represents that it has full power and authority to enter into and perform its obligations under this Agreement and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite governmental action.

3.6 The Grantor represents that it has full power and authority to enter into and perform its obligations under this Agreement and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all requisite corporate action.

#### SECTION 4. TERM: EXTENSIONS

This Agreement shall be coterminous with the CFA Contract; provided, however, that this Agreement may be extended for one or more one-year periods subject to the written agreement of the parties hereto.

44

#### SECTION 5.

##### NOTICES

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier or (c) registered or certified first class mail, return receipt requested.

IF TO THE CITY: } City of Chicago

Department of Innovation and Technology 50 West Washington Street, Room 2700 Chicago, Illinois 60602  
Attention: Chief Information Officer Fax No. (312) 74\_\_-\_\_  
WITH COPY TO: City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel  
Finance and Economic Development Division  
Fax No. (312)744-8538 ' .  
IF TO THE GRANTOR: The Chicago Community Foundation  
111 East Wacker Drive, Suite 1400 Chicago, Illinois 60601  
Attention: ■  
Fax : (312)616-7955

. Such, addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand or request sent pursuant to clause (a) above shall be deemed received upon such personal service or dispatch. Any notice, demand or request sent pursuant to clause (b) above shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to clause (c) above shall be deemed received two business days following deposit in the mail.

#### SECTION 6. MODIFICATION

This Agreement may not be altered, modified or amended except by a written instrument signed by the parties hereto.

#### SECTION 7. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City and the Grantor and supersedes all prior agreements, negotiation and discussion between them.

#### SECTION 8. WAIVER

45

Waiver by either party with respect to breach of this Agreement shall not be considered or treated as a waiver of the rights of the waiving party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the waiving party in writing.

#### SECTION 9. DISCLAIMER .

(a) Nothing contained in this Agreement nor any act of either party shall be deemed or construed by the other party, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the parties other than as set forth herein.

(b) Although the City is a member of the Smart Chicago Advisory Committee the City has recused itself from and has not taken part in and shall not take part in any decision of or action by the Smart Chicago Advisory Committee or the Grantor regarding the award or administration of the Grant.

#### SECTION 10. HEADINGS

The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

#### SECTION 11. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

#### SECTION 12. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from this Agreement to the extent of such invalidity or unenforceability, and the remainder hereof will not be affected thereby, each of the provisions hereof being severable in any such instance.

#### SECTION 13. GOVERNING LAW

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

#### SECTION 14. NON-LIABILITY OF OFFICIALS

No official, employee or agent of either party shall be charged personally by the other party or by an assignee or subcontractor, with any liability or expenses of defense or be held personally liable under any term or provision of this Agreement because of their execution or attempted execution or because of any breach hereof.

**SECTION 15. ASSIGNMENT**

This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized officers on or as of the day and year first written above.

CITY OF CHICAGO,  
an Illinois municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Information Officer  
Department of Innovation and Technology  
The Chicago Community Foundation,  
an Illinois not-for-profit corporation,  
as trustee of the Smart Chicago Trust Fund

By:  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT 1 CFA CONTRACT (see attached) [TO BE ATTACHED AT EXECUTION]

**CITY OF CHICAGO s ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
SECTION I - GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

**Check ONE of the following three boxes:**

Indicate whether the Disclosing Party submitting this EDS is:

- 1. the Applicant OR
- 2.  a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: \_\_\_\_\_
- OR <sup>1</sup>
- 3.  a legal entity with a right of control (see Section II.B. 1.) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: \_\_\_\_\_

C. Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

D. Name of contact person:

**f**

E. Federal Employer Identification No. (if you have one):

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):

G. Which City agency or department is requesting this EDS? \_\_\_\_\_

**beir**

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

Ver. 09-01-10

Page 1 of 13

**SECTION II - DISCLOSURE OF OWNERSHIP INTERESTS**

A. NATURE OF THE DISCLOSING PARTY

.1. Indicate the nature of the Disclosing Party:

- Person  Limited liability company
- Publicly registered business corporation  Limited liability partnership

- Privately held business corporation  Joint venture
- Sole proprietorship  Not-for-profit corporation <sup>1</sup>
- General partnership (Is the not-for-profit corporation also a 501(c)(3))?  Limited partnership v  Yes  No
- Trust  Other (please specify) .

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable: iOOuJ-fZ-\_\_\_\_\_

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?  
[ ] Yes [ ] No [ ] N/A

**B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:**

1. List below the full names and titles of all executive officers and all directors of the entity. NOTE: For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party. NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name, Title, Address, Phone Number, Email Address

*AryjiYgK\* VAc La a iriAUvN X^kzc^JrWv. vi\<ecJr&<^*

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

Page 2 of 13

interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." NOTE: Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name Business Address Percentage Interest, in the

Disclosing Party

**SECTION III - BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS**

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

Yes  No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

**SECTION IV - DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES**

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Page 3 of 13

**Name (indicate whether Business Relationship to Disclosing Party Fees (indicate whether retained or anticipated Address (subcontractor, attorney, paid or estimated.) NOTE:**

to be retained) lobbyist, etc.) "hourly rate" or "t.b.d." is

not an acceptable response.

(Add sheets if necessary)

**Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities SECTION V -- CERTIFICATIONS**

**A. COURT-ORDERED CHILD SUPPORT COMPLIANCE**

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes  No \n No person directly or indirectly owns 10% or more of the

Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes  No

**B. FURTHER CERTIFICATIONS**

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g.. "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the

Applicant, the permanent compliance timeframe in Article 1 supersedes some five-year compliance timeframes in certifications 2 and 3 below  
Page 4 of 13

2. The Disclosing Party and; if the Disclosing Party is a legal entity, all of those persons or entities identified in Section 11. B. 1. of this EDS:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
  - b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
  - c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
  - d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
  - e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any: contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV. "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it. or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Page 5 of 13

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty 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 a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS -5/33E-4; or (3) any similar offense of any state or of the United States of, America that contains the same elements as the offense of bid-rigging or bid-rotating.-

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors; the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the ■ Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative-Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the ■ Municipal Code. -.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below: •

Page 6 of 13

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

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not, and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party, is unable to make this pledge because it or any of its affiliates (as defined in Section.2-32-455(b) of the Municipal Code) is a

predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):  
If the letters "NA," the word "None," or no <http://or.no>.response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

**D, CERTIFICATION REGARDING INTEREST IN CITY BUSINESS**

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

Yes  No

NOTE: If you checked "Yes" to Item D.1 proceed to Items D.2: and D.3. If you checked "No" to Item D.1, proceed to Part E.

Page 7 of 13

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

Yes  No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name Business Address Nature of Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

**E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS**

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

1. The Disclosing Party Verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

Page 8 of 13

**SECTION VI - CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS**

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

**A. CERTIFICATION REGARDING LOBBYING**

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

(If no explanation appears or begins on the lines above, or if the letters "N A" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements, and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

Page 9 of 13

**B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

Yes  No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

Yes  No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes  No



**DEPARTMENT HEADS**

**This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.**

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all corporate officers of the Disclosing Party, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or

[JYes

department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

**CERTIFICATION**

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS are true, accurate and complete as of the date furnished to the City..

(Print or type name of Disclosing Party) <sup>1</sup> .

(Print or type name of person signing)

CWrc^ \yj ^(:W-

(Print or type title of person signing)

Signed and sworn to before me on ( at County,

(State).

Notary Public.

*State of California i Counivof Mrr< ( ^*

SubscnJwiand sworn to (or affirmed)>e&re me on this proved to me on the basis of satisfactory evidence to t>e the persoUsX^ho appeared t the pctstotMjv Signature ,, \_

**FAATI MAROOFI X COMM. # 1796838 3**

**NOTARY PUBLIC - CALIFORNIA § MARIN COUNTY 0 #c. COMM. EXPIRES MAY 13, 2012 t**

ure\_a // i><wy>>"