



# Office of the City Clerk

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## Legislation Details (With Text)

**File #:** O2018-4155  
**Type:** Ordinance  
**Status:** Passed  
**File created:** 5/23/2018  
**In control:** City Council  
**Final action:** 12/12/2018  
**Title:** Intergovernmental agreement with Metropolitan Water Reclamation District of Greater Chicago for pilot study to evaluate potential runoff reduction and flood protection alternative in Chatham neighborhood  
**Sponsors:** Emanuel, Rahm  
**Indexes:** Intergovernmental  
**Attachments:** 1. O2018-4155.pdf

Date	Ver.	Action By	Action	Result
12/12/2018	1	City Council	Passed	Pass
12/11/2018	1	Committee on Budget and Government Operations	Recommended to Pass	
6/26/2018	1	Committee on Budget and Government Operations	Held in Committee	
5/23/2018	1	City Council	Referred	

OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

May 23, 2018

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

Ladies and Gentlemen:

At the request of the Commissioner of Water Management, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Metropolitan Water Reclamation District regarding a pilot study.

Your favorable consideration of this ordinance will be appreciated.  
Mayor

Very truly yours,

## ORDINANCE

WHEREAS, Article VII, Section 10 of the Illinois Constitution, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and other applicable law permit and encourage units of local government to cooperate with and support each other in the exercise of their authority and the performance of their responsibilities; and

WHEREAS, the Metropolitan Water Reclamation District Act ("Act") declares that stormwater management in Cook County shall be under the general supervision of the Metropolitan Water Reclamation District of Greater Chicago ("District") (70 ILCS 2605/7h);

WHEREAS, the Act specifically authorizes the District to plan, manage, implement, and finance activities relating to stormwater management in Cook County (70 ILCS 2605/7h(a));

WHEREAS, the District has committed to implementing a Green Infrastructure Program Plan in conformance with Appendix E, Section II (C) of a certain consent decree entered into in United States, et al.. v. Metropolitan Water Reclamation District of Greater Chicago, Case No. 1:11-cv-08859 (N.D. Ill. 2014) ("Consent Decree"), and the District's formal commitment herein is intended to satisfy that obligation;

WHEREAS, "Green Infrastructure" shall mean the range of stormwater control measures that use plant/soil systems, permeable pavement, stormwater harvest and reuse, native landscaping or other technologies to store, infiltrate, and/or evapotranspire stormwater and reduce flows to the sewer systems or to surface waters, as more fully set forth at 415 ILCS 56/5;

WHEREAS, the Act provides that the stormwater management planning program in a municipality with a population over one million will be conducted by that municipality, or by the District subject to an intergovernmental agreement between the District and that municipality;

WHEREAS, the City of Chicago ("City") has a population greater than one million people;

**WHEREAS, on December 13, 2006, the City Council of the City ("City Council") adopted the "Chicago Stormwater Management Ordinance," codified as Chapter 11-18 of the Municipal Code of Chicago ("City Ordinance");**

WHEREAS, pursuant to Section 11-18-110 of the City Ordinance and other provisions of the Municipal Code of Chicago, the Commissioner of the Chicago Department of Water Management ("CDWM") has issued regulations for sewer construction and stormwater management;

WHEREAS, the Commissioner of CDWM has the authority to enter into grant agreements, cooperation agreements and other agreements or contracts to implement programs related to stormwater management (Chicago Municipal Ordinance 2-106-040);

WHEREAS, on October 6, 2009, the City and the District entered into an intergovernmental agreement ("Stormwater IGA") regarding stormwater management within the corporate limits of the City;

WHEREAS, pursuant to the Stormwater IGA, the District and the City further agreed to work together on identifying potential projects to address stormwater management problems

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within the corporate limits of the City and to perform feasibility studies as may be necessary for such potential projects;

WHEREAS, the neighborhood of Chatham is located within the corporate limits of the City;

WHEREAS, property owners in the Chatham neighborhood are suffering from a mix of flooding and drainage-related problems, including basement backups and overland flooding, caused in part by excess stormwater runoff;

WHEREAS, basement backups in residential areas such as the Chatham neighborhood persist due to increased frequency and intensity of storms, resulting in millions of dollars of damages across Cook County and the City and presenting significant public health and safety concerns;

**WHEREAS, the District and the City have identified the Chatham neighborhood as suitable for a Pilot Study to gain insight into the efficacy of various runoff reduction and flood protection technologies designed to reduce the risks of basement backups and the volume of stormwater runoff for single-family properties ("Pilot Study");**

WHEREAS, the City previously commissioned the Center for Neighborhood Technology ("CNT"), an Illinois not-for-profit corporation, to provide residential flood repair and flood mitigation services to low-income families throughout the City, through the City's Residential Flood Assistance Program;

WHEREAS, the City has executed a grant agreement with CNT, under the authority of the Chief Sustainability Officer, to partially fund CNT's RainReady Program to help residents manage flooding;

WHEREAS, the City's Department of Transportation ("CDOT") shall implement the Pilot Study and ensure that CNT will carry out a two-step process for the selection of candidate properties to be included in the Pilot Study.

WHEREAS, the Greencorps Chicago program is the City's green industry job training program for individuals with barriers to employment, and the City is capable of installing the green infrastructure components of the Pilot Study through its Grant Agreement for the Greencorps Chicago Program;

WHEREAS, the District and the City find that implementation of the Pilot Study can be achieved most effectively and economically through the existing RainReady Program and Greencorps Chicago;

WHEREAS, on June 1, 2017, the District's Board of Commissioners authorized the District to contribute up to, and no more than, Four Hundred Thousand Dollars (\$400,000) for the Program;

WHEREAS, pursuant to that authority, and upon the terms and conditions herein, the District will contribute up to, and no more than, Four Hundred Thousand Dollars (\$400,000) for the Program;

WHEREAS, the City will also fund a portion of the cost of the Program in an amount up

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to, and no more than, Two Hundred Thousand Dollars (\$200,000) from its Department of Water Management;

WHEREAS, CDWM will coordinate with CDOT as needed to administer payments and oversee implementation of the Pilot Study; and

WHEREAS, the District and the City wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit A (the "Agreement"), whereby the District and the City will accomplish the above-stated goals; now, therefore,

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

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. The Commissioner of CDWM and the Commissioner of CDOT, or their designees, are each authorized to execute and deliver the Agreement, and specifically with the indemnity provisions contained therein, and such other documents as are necessary, between the City and the District, which Agreement may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

SECTION 3. The Commissioner of CDWM and the Commissioner of CDOT, or their designees, are further authorized, in accordance with the provisions of the Agreement, to renew or extend the term of the Agreement beyond its original termination date, and to execute and deliver the renewed or extended Agreement, and such other documents as are necessary, between the City and the District, which renewed or extended Agreement may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

SECTION 4. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall 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 other provisions of this ordinance.

SECTION 5. This ordinance shall be in full force and effect from and after the date of its passage and approval.

**Form of  
INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE  
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO  
AND THE CITY OF CHICAGO, ILLINOIS FOR A PILOT STUDY IN THE CHATHAM NEIGHBORHOOD  
TO EVALUATE POTENTIAL RUNOFF REDUCTION AND FLOOD PROTECTION ALTERNATIVES**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made as of this day of \_\_\_\_\_, 2018, by and between the Metropolitan Water Reclamation District of Greater Chicago, a municipal corporation, organized and existing under the laws of the State of Illinois ("District") and the City of Chicago, a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, ("City"), acting through its Department of Water Management ("CDWM") and its Department of Transportation ("CDOT").

WITNESSETH, THAT:

WHEREAS, the Metropolitan Water Reclamation District Act ("Act") declares that stormwater management in Cook County shall be under the general supervision of the Metropolitan Water Reclamation District of Greater Chicago (70 ILCS 2605/7h);

WHEREAS, the Act specifically authorizes the District to plan, manage, implement, and finance activities relating to stormwater management in Cook County (70 ILCS 2605/7h(a));

WHEREAS, the District has committed to implementing a Green Infrastructure Program Plan in conformance with Appendix E, Section II (C) of a certain consent decree entered into in United States, et al., v. Metropolitan Water Reclamation District of Greater Chicago, Case No. 1:11-cv-08859 (N.D. Ill. 2014) ("Consent Decree"), and the District's formal commitment herein is intended to satisfy that obligation;

WHEREAS, "Green Infrastructure" shall mean the range of stormwater control measures that use plant/soil systems, permeable pavement, stormwater harvest and reuse, native landscaping or other technologies to store, infiltrate, and/or evapotranspire stormwater and reduce flows to the sewer systems or to surface waters, as more fully set forth at 415 ILCS 56/5;

WHEREAS, the Act provides that the stormwater management planning program in a municipality with a population over one million will be conducted by that municipality, or by the District subject to an intergovernmental agreement between the District and that municipality;

WHEREAS, the City has a population greater than one million people;

WHEREAS, on December 13, 2006, the City Council of the City ("City Council") adopted the "Chicago Stormwater Management Ordinance," codified as Chapter 11-18 of the Municipal Code of Chicago ("City Ordinance");

WHEREAS, pursuant to Section 11-18-110 of the City Ordinance and other provisions of the Municipal Code of Chicago, the Commissioner of CDWM has issued regulations for sewer

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construction and stormwater management;

WHEREAS, the Commissioner of CDWM has the authority to enter into grant agreements, cooperation agreements and other agreements or contracts to implement programs related to stormwater management (Chicago Municipal Ordinance 2-106-040);

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and Section 10 of Article VII of the Illinois Constitution allow and encourage intergovernmental corporation;

WHEREAS, on October 6, 2009, the City and the District entered into an intergovernmental agreement ("Stormwater IGA") regarding stormwater management within the corporate limits of the City;

WHEREAS, pursuant to the Stormwater IGA, the District and the City further agreed to work together on identifying potential projects to address stormwater management problems within the corporate limits of the City and to perform feasibility studies as may be necessary for such potential projects;

WHEREAS, the neighborhood of Chatham is located within the corporate limits of the City;

WHEREAS, property owners in the Chatham neighborhood are suffering from a mix of flooding and drainage-related problems, including basement backups and overland flooding, caused in part by excess stormwater runoff;

WHEREAS, basement backups in residential areas such as the Chatham neighborhood persist due to increased frequency and intensity of storms, resulting in millions of dollars of damages across Cook County and the City and presenting significant public health and safety concerns;

**WHEREAS, the District and the City have identified the Chatham neighborhood as suitable for a Pilot Study to gain insight into the efficacy of various runoff reduction and flood protection technologies designed to reduce the risks of basement backups and the volume of stormwater runoff for single-family properties ("Pilot Study");**

WHEREAS, the City previously commissioned the Center for Neighborhood Technology ("CNT"), an Illinois not-for-profit corporation, to provide residential flood repair and flood mitigation services to low-income families throughout the City, through the City's Residential Flood Assistance Program;

WHEREAS, the City has executed a grant agreement with CNT, under the authority of the Chief Sustainability Officer, to partially fund CNT's RainReady Program to help residents manage flooding;

WHEREAS, the Greencorps Chicago program is the City's green industry job training program for individuals with barriers to employment, and the City is capable of installing the green infrastructure components of the Pilot Study through its Grant Agreement for the Greencorps Chicago Program;

WHEREAS, the District and the City find that implementation of the Pilot Study can be

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achieved most effectively and economically through the existing RainReady Program and Greencorps Chicago;

WHEREAS, on June 1, 2017, the District's Board of Commissioners authorized the District to contribute up to, and no more than, Four Hundred Thousand Dollars (\$400,000) for the Program;

WHEREAS, pursuant to that authority, and upon the terms and conditions herein, the District will contribute up to, and no more than, Four Hundred Thousand Dollars (\$400,000) for the Program;

*WHEREAS, the City will also fund a portion of the cost of the Program in an amount up to, and no more than, Two Hundred Thousand Dollars (\$200,000) from its Department of Water Management; and ,*

WHEREAS, on \_\_\_\_\_ the City Council adopted an ordinance published in the City Council Journal of the Proceedings for said date at pages \_\_\_\_\_ to \_\_\_\_\_, which, among other things, authorizes the execution of this Agreement; and as recorded in the Regular Board Meeting Minutes of the Board of Commissioners of the District, dated June 1, 2017, Adopted As Amended, Refer to File ID # 17-0555A, the District is authorized to enter into this Agreement;

NOW THEREFORE, the parties agree as follows:

#### **ARTICLE 1: INCORPORATION OF RECITALS**

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

#### **ARTICLE 2: SCOPE OF THE PILOT STUDY**

a. Program Objectives. The overall purpose of the Pilot Study is to gain insight into the efficacy of various runoff reduction and flood protection technologies designed to reduce the risks of basement backups and the volume of stormwater runoff for single-family properties. Through the Pilot Study, the Parties seek to achieve the following objectives:

- To identify and develop standard details for alternatives that can be implemented at single-family properties to reduce the risks of basement backups and the volume of stormwater runoff.
- To develop criteria and an associated methodology for the selection of candidate properties and the application of an appropriate alternative to each selected property.
- To install the runoff reduction and flood protection alternatives at a maximum of forty (40) selected properties within the Chatham neighborhood using the Greencorps Chicago workforce development program to install the green infrastructure (passive storage systems) elements.
- To harness potential economies of scale to reduce installation costs.
- To create and implement a monitoring plan to collect data that can be used to evaluate the effectiveness of the technologies implemented.
- To provide recommendations for future programs that can be applied in other neighborhoods..

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b. Study Area. The Pilot Study Area ("Study Area") will include up to forty (40) residential properties in the Chatham neighborhood of Chicago, as shown in Exhibit 1. Located at the south end of the Chatham neighborhood, this triangular-shaped Study Area overlaps with the 6th, 8th, and 9th wards. This area was selected for the Pilot Study because it has a history of regular basement backups and it is currently a target area of the Center for Neighborhood Technology's RainReady program. In addition, a higher resolution sewer hydraulic model (based on the City's trunk sewer model) is available from the District's recently completed stormwater master plan for the area. The hydraulic model will provide helpful guidance in the selection of candidate properties for the Pilot Study. The parties believe that 40 properties will provide information sufficient to analyze the effectiveness of the various technologies, to evaluate the installation process, and to assess whether the program can be scaled to a larger area, considering the limited funding available.

#### **ARTICLE 3: SERVICES TO BE PROVIDED BY THE CITY**

a. The City shall be responsible for performing the services set forth in this Article through its existing grant agreements with CNT for the RainReady initiative and with Greencorps Chicago. The City's Grant Agreements shall be amended in order to provide for the performance of activities contemplated as part of the Pilot Study. The agreements must also be amended to ensure compliance with the terms and conditions of

this IGA.

b. Property Selection. CDOT shall implement the Pilot Study and ensure that CNT will carry out a two-step process for the selection of candidate properties to be included in the Pilot Study. The process includes an initial screening and a final home inspection and verification.

The initial screening will identify a number of criteria in order to select up to 60 potential properties or a 2-block neighborhood for the Pilot. The screening criteria shall include, but are not limited to:

- Data and results from available hydrologic/hydraulic modeling
- Review of 311 flood complaints
- Survey home data from CNT's RainReady program
- Review of capital improvements planned by the City and MWRD.
- GIS analysis of site constraints (utilities, impervious/pervious areas, yard sizes, etc.)

The homeowners selected for the initial screening must be informed that not every property will be eligible for the installation of the available flood control devices, which is based on the evaluation criteria set forth below. However, at minimum, each homeowner who agrees to participate in the Pilot Study will receive an on-site inspection and a recommendation from CNT regarding any options that may be available to help reduce flooding at his or her property. The City of Chicago's Private Drain Repair Program may be available to certain homeowners; however, all residents must be informed that participation in that program is separate from this Pilot Study and subject to available funding.

The second step will include a home inspection of each prospective candidate property to determine and verify what types of flood control and passive storage systems (see Article 3(c)) are the most appropriate given the site constraints. Property inspections will be conducted by CNT and its contractor. Based on the available budget, data gathered in the initial screening, the home inspection, and the property owner's input and approval, CNT will select the most appropriate technologies to be installed at each property.

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The inspection shall include, but is not limited to:

- Televising of the sewer lateral (the video shall be provided to the homeowner at the end of the inspection process)
- Identifying locations of foundation drain, storm drain and downspouts and determine if they are connected to the lateral
- Measuring dimensions of the lot and available yard space and location of the building/accessory structure
- Determining the relative elevation difference between the building and sidewalk/accessory structure/alley and identifying drainage pathways
- Identifying potential utility conflicts
- Any relevant factors that may determine or influence the selection of measures

The evaluation of each home for recommended flood control measures shall include, but is not limited to, the following criteria:

- Data gathered in the initial screening and subsequent home inspection
- Feasibility of connecting downspouts, storm drains and foundation drains
- Conditions of the sewer lateral
- Site limitations based on topography, utility, size and dimensions, etc.
- Available budget (not to exceed \$400,000)



- The goal to achieve a balanced application of flood control technologies and passive storage systems considered in this Pilot Study
- Property owner's input and willingness to comply with program requirements, including execution of the liability waiver

The City and CNT shall report their findings from the inspection and the evaluation to the District for review before performing any installations.

c. Available Flood Control Technologies. The following two flood control systems are eligible for reimbursement by the District. These systems were selected because they will be installed at the sewer lateral outside of the building, which minimizes potential disturbances to the building and reduces the cost and complexity of the project.

- Simple check valve - The check valve will automatically close when the sewer main and the lateral are surcharged, preventing the outside sewage from entering the building plumbing. This is the most basic level of protection. With this system, no water use is allowed when the receiving sewer is surcharged. (See Check Valve Installation Detail.)
- Backflow preventer valve with ejector pump - In this system, in addition to the check valve, an ejector pump is installed in a sump to allow discharge of sewage when the receiving sewer is surcharged. This solution provides a higher level of protection but with added costs and maintenance of the pumping system.

In order for the City to receive reimbursement from the District, the flood control technologies described above must be installed in conjunction with a passive storage system to reduce stormwater runoff. Downspouts from the building will be disconnected and the runoff will be directed to the storage system. Only passive systems that encourage infiltration are considered in the Pilot Study, such as the following:

- Surface storage - Rain garden (vegetated) basins can be constructed at the front

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and/or back yards to capture runoff. (See Rain Garden Detail.)

- Subsurface storage - Various types of subsurface storage with open bottom can be considered: dry well (aggregate-filled trench/well) (see Dry Well Detail) and underground cistern/container structure (see Underground Storage Detail).

d. Homeowner notification and consent. When the flood control devices recommended by CNT are approved by the District, the City shall ensure that CNT notifies each homeowner. The City through CNT and/or its contractor is solely responsible for obtaining any rights or approvals needed to carry out the installations, and shall obtain an agreement from the homeowner that contains the following components, at minimum:

- Waiver of liability from the homeowner as it relates to the work performed under the Pilot Study holding the District harmless for any and all damages that may occur.
- Agreement to maintain the flood control devices at least for the duration of the Pilot Study and participate in the monitoring program.
- Acknowledgement that the recommended flood control technologies are designed to help prevent basement backups but may not prevent all flooding and drainage-related problems.

e. Installation. Installation of passive storage systems shall be carried out by the City

through Greencorps Chicago. Bid and contract administration for the backflow preventers and check valves installation (by licensed plumbers) will be handled by the City through CNT, in accordance with Article 3(i)-(k).

f. General Services. In addition to the services outlined above, the City through CNT will conduct outreach to the homeowners and interface with GreenCorps Chicago, plumbing contractor(s), and homeowners relating to project scope and construction.

g. Maintenance, Monitoring, and Evaluation. CNT will develop a monitoring program, subject to the review and input of the City and the MWRD. Maintenance of the installed systems will be the responsibility of the homeowners; however, the City through CNT shall be responsible for working with the homeowner to resolve any issues that arise with the proper functioning of the installed technologies and passive storage systems. To that end, CNT will provide follow-up survey and training to homeowners to monitor and maintain the installed systems. CNT will implement the monitoring program to collect data to evaluate the performance of the installed systems; the results of which shall be reported to the MWRD. The monitoring program shall consist of the following elements, at minimum:

1. An initial survey, prior to installation of the technologies, that provides a baseline of the residents' attitudes towards the history and severity of flooding they currently experience, the technologies being implemented on their home, and expectations of performance of the technologies.
2. After any significant rainfall event (1" or greater) homeowners will be contacted to determine if they experienced flooding in their basement and if they feel they would have experienced flooding during that event normally before the technologies were installed. The amount or severity of any flooding should also be reported, where available.
3. Quarterly inquiries of the participating residents to determine if they experienced any flooding in the previous quarter and if they would have expected flooding normally before the technologies were installed.

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4. Final report that summarizes the data collected from the 3 above-listed elements and a final survey of the residents to measure any change in attitude toward the severity of flooding they currently experience, the technologies implemented on their homes and satisfaction with the performance of the technologies. Also, included in the final report will be a summary of the construction that includes evaluation of planned versus actual construction, any unexpected conditions encountered during construction and lessons learned.

h. Payment. The City shall reimburse CNT and GreenCorps Chicago for the administrative costs of implementing the services described herein up to the maximum amount of \$200,000. Administrative costs shall include all costs associated with the inspections,

including televising. Any City funds remaining after administrative costs are paid shall be used to pay for additional installation costs under this Pilot Study, if needed. The District will reimburse the City for the installation costs of eligible flood control technologies up to \$400,000 and will seek to ensure this full amount is available for installation costs for the entire Pilot Study. Installation costs are defined as the direct costs to construct the flood control technologies reviewed and approved by the District as set forth in this Agreement. Payments made by the City shall be in accordance with its agreement with CNT. The CDWM shall coordinate with CDOT as needed to administer payments and oversee implementation.

i. Procurement. The City shall ensure any contracts entered into by the City or CNT shall be publicly advertised and all program-related contracts awarded to the lowest responsible bidder as determined by the City. The City shall consider and act in general accord with the applicable standards of the District's Purchasing Act, 70 ILCS 2605/11/1-11.24, and Multi-Project Labor Agreement and Memorandum of Understanding (attached to this Agreement as Exhibits 2 and 3, respectively) when advertising and awarding any contracts. The City shall provide to the District documentation of the following with respect to any procurement carried out through this IGA:

- Advertisement page for the contract bid out.
- Tab sheet of firms that bid on project
- The award letter or agenda in which the entity made the award

The City shall also require a payment bond and performance bond for all Project-related construction contracts in general accord with the applicable standards of Exhibit 2. The City may impose more stringent requirements than those contained in Exhibits 2 and 3 when awarding contracts, but in no event shall the City's requirements fall below the District's applicable general standards. The City need not include the attached Exhibits 2 and 3 as part of its bid documents. However, the City is responsible for ensuring that these applicable minimum requirements are met.

j. Affirmative Action. The City shall ensure that CNT complies with the District's Affirmative Action goals with respect to that portion of the cost of the Pilot Study for which District has contributed funds. The determination as to whether the City has complied with these Affirmative Action goals is solely in the District's discretion. The City's failure to fully comply with these Affirmative Action goals, as determined by the District, may result in a payment delay and/or denial. The District will have the right to access and inspect, with reasonable notice, any records or documentation related to the City's compliance with the District's Affirmative Action goals and requirements.

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The City and CNT shall comply with the applicable portions of District's Affirmative Action Requirements and Affirmative Action Ordinance (attached to this Agreement as Exhibit 4). Affirmative Action goals for the Project are: 10% of the total amount of reimbursement provided by the District for the Project for Women-Owned Business Enterprises, 20% of the total amount of reimbursement provided by the District for the Project for Minority-Owned Business Enterprises, and 10% of the total amount of reimbursement provided by the District for the Project for Small Business Enterprises.

In order to evidence compliance with the District's Affirmative Action Requirements, the City must complete an Affirmative Action Status Report ("Status Report") attached to this Agreement as Exhibit 5, and submit a letter from a certifying agency that verifies the MBEAA/BE/SBE status of the vendors. Failure to submit the Status Report may result in a payment delay and/or denial. The Status Report and the letter from a

certifying agency must be submitted to the District's Diversity Administrator. The City must comply with the District's Affirmative Action goals only in respect to that portion of the cost of the Project for which the District has contributed funds.

k. Prevailing Wage. The City and its Grantees shall comply with the Prevailing Wage Act, 820 ILCS 130/0.01 etseq., as applicable, while conducting the construction of the Program. Current prevailing wage rates for Cook County are determined by the Illinois Department of Labor. The prevailing wage rates are available on the Illinois Department of Labor's official website. It is the responsibility of the City to obtain and comply with any revisions to the rates should they change throughout the duration of the Agreement.

l. Project Schedule. The anticipated Project schedule will be mutually agreed upon by all parties to this Agreement after execution of the Agreement.

#### **ARTICLE 4: SERVICES TO BE PROVIDED BY THE DISTRICT**

a. The District shall reimburse to the City the allowable costs for the City's installation of the recommended flood control technologies, up to the maximum amount of \$400,000. In order to receive payment, the City through CNT shall submit reimbursement requests to the District for eligible Pilot Study costs.

b. The District shall not approve any reimbursements to the City that do not comply with the terms and conditions set forth in this Agreement.

c. The District shall reimburse the City within thirty (30) days of receipt of complete reimbursement requests.

d. The District will review and analyze the Pilot Study results provided pursuant to the inspections, installations and monitoring plans conducted through the City's program. Nothing in this Agreement shall be construed as creating an obligation on the District to take any action with regard to, or adopt the findings, conclusions, or recommendations of the Pilot Study.

#### **ARTICLE 5: TERM AND TERMINATION**

a. Term. The Term of this Agreement shall commence on the date that the last signature is affixed hereto and shall expire upon completion of the Pilot Study or on December 31, 2020, whichever comes first.

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##### **b. Termination.**

1. The Parties may terminate this Agreement by mutual consent and agreement in writing.

2. Either Party may terminate this Agreement, by written notice to the other Party, for any material breach of this Agreement by the other Party. The breaching Party shall have 30 days from the date it receives written notice to cure such breach.

3. As set forth in Article 4, the District's reimbursement is limited to the funding amount approved and allocated by the District's Board of Commissioners for the Pilot Study. The District may terminate the Agreement if the District's Board of Commissioners does not appropriate additional funds beyond the current fiscal year or above the amounts set forth herein.

#### **ARTICLE 6: CONSENT**

a. Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval shall not be unreasonably withheld.

## **ARTICLE 7: PERMITS AND FEES**

a. The City shall ensure that CNT obtains all federal, state, and county permits, consents or approvals required by law for the implementation of the Pilot Program, and shall assume any costs in procuring said permits, consents or approvals.

## **ARTICLE 8: INDEMNIFICATION AND INSURANCE**

a. The City must defend, indemnify, keep and hold harmless the District, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:

1. injury, death or damage of or to any person or property;
2. any infringement or violation of any property right (including any patent, trademark, or copyright);
3. the City's or its Grantee's failure to perform its contractual obligations with respect to the Pilot Program, including City's failure to perform its obligations to any subcontractor;
4. injuries or death of any employee of the City, its Grantee or any subcontractor under any workers compensation statute.

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 the City's breach of any contract related to the Pilot Program or the City's Partners' negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, subcontractors or licensees arising out of or as a consequence of the performance of the Pilot Program, including claims arising from negligent maintenance, operation or failure to perform of the installed systems.

c. At the District's option, the City must defend all suits brought upon all such Losses

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and must pay all costs and expenses incidental to them, but the District has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving the City of any of its obligations under this Agreement. Any settlement must be made only with the prior written consent of the District's General Counsel, if the settlement requires any action on the part of the District.

d. To the extent permissible by law, the City waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of City that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq., or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155 (1991)). The District, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act or any other statute or judicial decision.

e. The District shall defend, indemnify, and hold harmless the City from liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (including, 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 are asserted by any individual, private entity, or public entity against the City, specifically arising out of any acts or omissions of the District in the performance of its obligations as set forth

under this Agreement.

f. The indemnities in this section survive the expiration or termination of this Agreement.

g. Insurance. The City shall provide to the District all documentation showing that its Grantee maintains insurance in the amounts set forth in the City's Grant Agreements with CNT and Greencorps, which is attached hereto as Exhibit 6. The insurance must cover the work contemplated under the Pilot Program and must name the MWRD as an additional insured.

#### **ARTICLE 9: NOTICE**

Notice to District shall be addressed to:

Director of Engineering  
Metropolitan Water Reclamation District of Greater Chicago 100 East Erie  
Street Chicago, Illinois 60611 FAX: (312) 751.7905

and

General Counsel  
Metropolitan Water Reclamation District of Greater Chicago 100 East Erie  
Street Chicago, Illinois 60611 Phone: (312) 751.6565

Notice to the City shall be addressed to:

City of Chicago  
Department of Water Management 1000 E. Ohio  
Street

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Chicago, Illinois 60611 Attn:  
Commissioner

and

City of Chicago  
Department of Transportation  
30 North LaSalle Street, 11<sup>th</sup> floor  
Chicago, Illinois 60602  
Attn: Commissioner

and

Corporation Counsel City of Chicago, Department  
of Law 121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development Division Phone:(312)  
744.0200

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing and addressed as set forth above. All notices shall be sent by personal delivery, UPS, Fed Ex or other overnight messenger service, or first class registered or certified mail, postage prepaid, return receipt

requested.

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

#### **ARTICLE 10: ASSIGNMENT; BINDING EFFECT**

a. This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other. This Agreement shall inure to the benefit of and shall be binding upon the City, the District and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and such successors and permitted assigns.

#### **ARTICLE 11: MODIFICATION**

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

#### **ARTICLE 12: COMPLIANCE WITH LAWS**

The parties hereto shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement. This Agreement is not intended, nor shall it be construed, to confer any rights, privileges, or authority not permitted by Illinois law. Nothing in this Agreement shall be construed to establish a contractual relationship between the District and any party other than the City.

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#### **ARTICLE 13: GOVERNING LAW AND SEVERABILITY**

This Agreement shall be governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

#### **ARTICLE 14: COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original.

#### **ARTICLE 15: ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties.

#### **ARTICLE 16: AUTHORITY**

Execution of this Agreement by the City is authorized by an ordinance adopted by the City Council on \_\_\_\_\_. Execution of this Agreement by the District is authorized by its Board of Commissioners on \_\_\_\_\_. ■ The parties represent and warrant to each other that

they have the authority to enter into this Agreement and perform their obligations hereunder.

#### **ARTICLE 17: HEADINGS**

The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

#### **ARTICLE 18: DISCLAIMER OF RELATIONSHIP**

Nothing contained in this Agreement, nor any act of the City or the District, shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City and the District.

#### **ARTICLE 19: NO PERSONAL LIABILITY**

No officer, member, official, employee or agent of the City or the District shall be individually or personally liable in connection with this Agreement.

#### **ARTICLE 20: NON-WAIVER**

Either party's failure to require strict performance by the other party of any provision of this Agreement will not waive a party's right to demand strict compliance with any other provision of this Agreement or such provision at any other time. Any waiver of any terms of this Agreement must be in writing and shall not diminish the future enforceability of this Agreement.

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#### **ARTICLE 21: REPRESENTATIVES**

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact

For the District:     Director of Engineering  
                             Metropolitan Water Reclamation District of Greater Chicago  
                             100 East Erie Street  
                             Chicago, Illinois 60611  
                             Phone:(312)751-3169  
                             FAX: (312)751.7905

For the City: Commissioner  
                             City of Chicago, Department of Transportation 30 North  
                             LaSalle Street Chicago, Illinois 60602 Phone: (312) 744-  
                             3600 FAX: (312)744-1200

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

[Signature Page Follows]



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IN WITNESS WHEREOF the Metropolitan Water Reclamation District of Greater Chicago and City of Chicago, the parties hereto, have each caused this Agreement to be executed as of the date first above written by their duly authorized officers.

**CITY OF CHICAGO**

By:  
Randy Conner, Commissioner Department of  
Water Management

By:  
Rebekah Scheinfeld, Commissioner Department  
of Transportation

**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO**

By:  
Frank Avila  
Chairman of the Committee on Finance

By: \_\_\_\_\_  
David St. Pierre

Executive Director <sup>D</sup> ATTEST:

By: \_\_\_\_\_  
Jacqueline Torres Clerk

APPROVED AS TO ENGINEERING:

By: \_\_\_\_\_  
William Sheriff  
Assistant Director of Engineering

By: \_\_\_\_\_  
Director of Engineering

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APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Head Assistant Attorney

By: \_\_\_\_\_  
General Counsel

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Exhibit 1 to the Intergovernmental Agreement

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Study Area

**Exhibit 2 to the Intergovernmental Agreement**

District's Purchasing Act [see attached]

## **Exhibit 2: District's Purchasing Act**

(70 ILCS 2605/11.1) (fromCh. 42, par. 331.1)

Sec. 11.1. Sections 11.1 through 11.24 of this amendatory Act of 1963 shall be known and may be cited as the "Purchasing Act for the Metropolitan Sanitary District of Greater Chicago."

(Source: P.A. 82-1046.)

(70 ILCS 2605/11.2) (from Ch. 42, par. 331.2) Sec. 11.2. In addition to all the rights, powers, privileges, duties and obligations conferred thereon in "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers", approved May 29, 1889, as amended, the Metropolitan Sanitary District of

Greater Chicago shall have the rights, powers and privileges and shall be subject to the duties and obligations conferred thereon by this amendatory Act of 1963. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.3) (from Ch. 42, par. 331.3)

Sec. 11.3. Except as provided in Sections 11.4 and, 11.5, all purchase orders or contracts involving amounts in excess of the mandatory competitive bid threshold and made by or on behalf of the sanitary district for labor, services or work, the purchase, lease or sale of personal property, materials, equipment or supplies, or the granting of any concession, shall be let by free and open competitive bidding after advertisement, to the lowest responsible bidder or to the highest responsible bidder, as the case may be, depending upon whether the sanitary district is to expend or receive money.

All such purchase orders or contracts which shall involve amounts that will not exceed the mandatory competitive bid threshold, shall also be let in the manner prescribed above whenever practicable, except that after solicitation of bids, such purchase orders or contracts may be let in the open market, in a manner calculated to insure the best interests of the public. The provisions of this section are subject to any contrary provisions contained in "An Act concerning the use of Illinois mined coal in certain plants and institutions", filed July 13, 1937, as heretofore and hereafter amended. For purposes of this Section, the "mandatory competitive bid threshold" is a dollar amount equal to 0.1% of the total general fixed assets of the district as reported in the most recent required audit report. In no event, however, shall the mandatory competitive bid threshold dollar amount be less than \$10,000 or more than \$40,000.

Notwithstanding the provisions of this Section, the sanitary district is expressly authorized to establish such procedure's as it deems appropriate to comply with state or federal regulations as to affirmative action and the utilization of small and minority businesses in construction and procurement contracts. (Source: P.A. 92-195, eff. 1-1-02.)

#### Exhibit 2-Page 1

(70 ILCS 2605/11.4) (from Ch. 42, par. 331.4) Sec. 11.4. Contracts which by their nature are not adapted to award by competitive bidding, such as, but not only, contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part, contracts for the purchase or sale of utilities and contracts for materials economically procurable only from a single source of supply and leases of real property where the sanitary district is the lessee shall not be subject to the competitive bidding requirements of this Act. The sanitary district is expressly authorized to procure from any federal, state or local governmental unit or agency such surplus materials, as may be made available without conforming to the competitive bidding requirements of this Act. Regular employment contracts, whether classified in civil service or not, shall not be subject to the competitive bidding requirements of this Act. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.5) (from Ch. 42, par. 331.5) Sec. 11.5. In the event of an emergency affecting the public health or safety, so declared by action of the board of trustees, which declaration shall describe the nature of the injurious effect upon the public health or safety, contracts may be let to the extent necessary to resolve such emergency without public advertisement. The declaration shall fix the date upon which such emergency shall terminate. The date may be extended or abridged by the board of trustees as in its judgment the circumstances require.

The executive director appointed in accordance with Section 4 of this Act shall authorize in writing and certify to the director of procurement and materials management those officials or employees of the several departments of the sanitary district who may purchase in the open market without filing a requisition or estimate therefor, and without advertisement, any supplies, materials, equipment or services, for immediate delivery to meet bona fide operating emergencies where the amount thereof is not in excess of \$50,000; provided, that the director of procurement and materials management

shall be notified of such emergency. A full written account of any such emergency together with a requisition for the materials, supplies, equipment or services required therefor shall be submitted immediately by the requisitioning agent to the executive director and such report and requisition shall be submitted to the director of procurement and materials management and shall be open to public inspection for a period of at least one year subsequent to the date of such emergency purchase. The exercise of authority in respect to purchases for such bona fide operating emergencies shall not be dependent upon a declaration of emergency by the board of trustees under the first paragraph of this Section. (Source: P.A. 95-923, eff. 1-1-09; 96-165, eff. 8-10-09.)

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(70 ILCS 2605/11.6) (from Ch. 42, par. 331.6) Sec. 11.6. The head of each department shall notify the director of procurement and materials management of those officers and employees authorized to sign requests for purchases. Requests for purchases shall be void unless executed by an authorized officer or employee and approved by the director of procurement and materials management. Requests for purchases may be executed, approved and signed manually or electronically.

Officials and employees making requests for purchases shall not split or otherwise partition for the purpose of evading the competitive bidding requirements of this Act, any undertaking involving amounts in excess of the mandatory competitive bid threshold. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.7) (from Ch. 42, par. 331.7) Sec. 11.7. All proposals to award purchase orders or contracts involving amounts in excess of the mandatory competitive bid threshold shall be published at least 12 calendar days in advance of the date announced for the receiving of bids, in a secular English language newspaper of general circulation in said sanitary district and shall be posted simultaneously on readily accessible bulletin boards in the principal office of the sanitary district. Nothing contained in this section shall be construed to prohibit the placing of additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract or agreement in sufficient detail either in the advertisement itself or by reference to plans, specifications or other detail on file at the time of publication of the first announcement, to enable the bidders to know what their obligation will be. The advertisement shall also state the date, time and place assigned for the opening of bids. No bids shall be received at any time subsequent to the time indicated in the announcement; however, an extension of time may be granted for the opening of such bids upon publication in the same newspaper of general circulation in said sanitary district stating the date to which bid opening has been extended. The time of the extended bid opening shall not be less than 5 days after publication, Sundays and legal holidays excluded.

Cash, cashier's check or a certified check payable to the clerk and drawn upon a bank, as a deposit of good faith, in a reasonable amount not in excess of 10% of the contract amount, may be required of each bidder by the director of procurement and materials management on all bids involving amounts in excess of the mandatory competitive bid threshold. If a deposit is required, the advertisement for bids shall so specify. Instead of a deposit, the director of procurement and materials management may allow the use of a bid bond if the bond is issued by a surety company that is listed in the Federal Register and is authorized to do business in the State of Illinois.

(Source: P.A. 95-923, eff. 1-1-09.)

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(70 ILCS 2605/11.8) (from Ch. 42, par. 331.8) Sec. 11.8. Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, shall render the bids of such bidder void. Each bidder shall accompany his bid with a sworn statement, or otherwise swear or affirm, that he has not been a party to any such agreement or collusion. Any disclosure in advance of the opening of bids, on the terms of the bids submitted in response to an advertisement, made or permitted by the director of procurement and materials management or any officer or employee of said sanitary district shall render the proceedings void and shall require re-advertisement and re-award. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.9) (from Ch. 42, par. 331.9) Sec. 11.9. All sealed bids shall be publicly opened by the director of procurement and materials management, or his designee, and such bids shall be open to public inspection for a period of at least 48 hours before award is made; provided, this provision shall not apply to the sale of bonds, tax anticipation warrants or other financial obligations of the sanitary district. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.10) (from Ch. 42, par. 331.10) Sec. 11.10. Every contract or purchase order involving amounts in excess of the mandatory competitive bid threshold shall be signed by the president or other duly authorized officer of the board of commissioners, by the executive director, by the clerk and by the director of procurement and materials management. Each bid with the name of the bidder shall be entered upon a record which shall be open to public inspection in the office of the director of procurement and materials management. After the award is made, the bids shall be entered in the official records of the board of commissioners.

All purchase orders or contracts involving amounts that will not exceed the mandatory competitive bid threshold shall be let by the director of procurement and materials management. They shall be signed by the director of procurement and materials management and the clerk. All records pertaining to such awards shall be open to public inspection for a period of at least one year subsequent to the date of the award.

An official copy of each awarded purchase order or contract together with all necessary attachments thereto, including assignments and written consent of the director of procurement and materials management shall be retained by the director of procurement and materials management in an appropriate file open to the public for such period of time after termination of contract during which action against the municipality might ensue under applicable laws of limitation. Certified copies of all completed contracts and purchase orders shall be filed with the clerk. After the appropriate period, purchase orders, contracts and attachments in the clerk's possession may be destroyed by direction of the

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director of procurement and materials management.

The provisions of this Act are not applicable to joint purchases of personal property, supplies and services made by governmental units in accordance with Sections 1 through 5 of "An Act authorizing certain governmental units to purchase personal property, supplies and services jointly," approved August 15, 1961. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.11) (from Ch. 42, par. 331.11) Sec. 11.11. In determining the responsibility of any bidder, the director of procurement and materials management may take into account, in addition to financial responsibility, past records of transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specific time and other pertinent factors, including but not limited to whether the equipment or material is manufactured in North America. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.12) (from Ch. 42, par. 331.12) Sec. 11.12. Any and all bids received in response to an advertisement may be rejected by the director of procurement and materials management if the bidders are not deemed responsible, or the character or quality of the services, supplies, materials, equipment or labor do not conform to requirements, or if the public interest may be better served thereby. ,  
(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.13) (from Ch. 42, par. 331.13) Sec. 11.13. Bond, with sufficient sureties, in such amount as shall be deemed adequate by the director of procurement and materials management not only to insure performance of the contract in the time and manner specified in said contract but also to save, indemnify and keep harmless the sanitary district against all liabilities, judgments, costs and expenses which may in anywise accrue against said sanitary district in consequence of the granting of the contract or execution thereof shall be required for all contracts relative to construction, rehabilitation or repair of any of the works of the sanitary district and may be required of each bidder upon all other contracts in excess of the mandatory competitive bid threshold when, in the opinion of the director of procurement and materials management, the public interest will be better served thereby.

In accordance with the provisions of "An Act in relation to bonds of contractors entering into contracts for public construction", approved June 20, 1931, as amended, all contracts for construction work, to which the .sanitary district is a party, shall require that the contractor furnish bond guaranteeing payment for materials and labor utilized in the contract.

(Source: P.A. 95-923, eff. 1-1-09.)

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(70 ILCS 2605/11.14) (from Ch. 42, par. 331.14) Sec. 11.14. No contract to which the sanitary district is a party shall be assigned by the successful bidder without the written consent of the director of procurement and materials management. In no event shall a contract or any part thereof be assigned to a bidder who has been declared not to be a responsible bidder in the consideration of bids submitted upon the particular contract. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.15) (from Ch. 42, par. 331.15) Sec. 11.15. No person shall be employed upon contracts for work to be done by any such sanitary district unless he is a citizen of the United States or has in good faith declared his intention to become such a citizen. In all cases where an alien after filing his declaration of intention to become a citizen of the United States, shall for the space of three months after he could lawfully do so, fail to take out his final papers and obtain his citizenship such failure shall be prima facie evidence that his declaration of intention was not made in good faith. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.16) (from Ch. 42, par. 331.16)

Sec. 11.16. The executive director, with the advice and consent of the board of trustees, shall appoint the director of procurement and materials management. Any person appointed as the director of procurement and materials management must have served at least 5 years in a responsible executive capacity requiring knowledge and experience in large scale purchasing activities.

In making the appointment, the president shall appoint an advisory committee consisting of 5 persons, one of whom shall be the executive director, which advisory board shall submit not fewer than 3 names to the general superintendent for the appointment. The executive director shall make the appointment from nominees submitted by the Advisory Committee after giving due consideration to each nominee's executive experience and his ability to properly and effectively discharge the duties of the director of procurement and materials management.

The director of procurement and materials management may be removed for cause by the



executive director. He is entitled to a public hearing before the executive director prior to such anticipated removal. The director of procurement and materials management is entitled to counsel of his own choice. The executive director shall notify the board of trustees of the date, time, place and nature of each hearing and he shall invite the board to appear at each hearing. (Source: P.A. 95-923, eff. 1-1-09.)

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(70 ILCS 2605/11.17) (from Ch. 42, par. 331.17) Sec. 11.17. Powers of director of procurement and materials management. The director of procurement and materials management shall: (a) adopt, promulgate and from time to time revise rules and regulations for the proper conduct of his office; (b) constitute the agent of the sanitary district in contracting for labor, materials, services, or work, the purchase, lease or sale of personal property, materials, equipment or supplies in conformity with this Act; (c) open all sealed bids; (d) determine the lowest or highest responsible bidder, as the case may be; (e) enforce written specifications describing standards established pursuant to this Act; (f) operate or require such physical, chemical or other tests as may be necessary to insure conformity to such specifications with respect to quality of materials; (g) exercise or require such control as may be necessary to insure conformity to contract provisions with respect to quantity; (h) distribute or cause to be distributed, to the various requisitioning agencies of such sanitary district such supplies, materials or equipment, as may be purchased by him; (i) transfer materials, supplies, and equipment to or between the various requisitioning agencies and to trade in, sell, donate, or dispose of any materials, supplies, or equipment that may become surplus, obsolete, or unusable; except that materials, supplies, and equipment may be donated only to not-for-profit institutions; (j) control ' and maintain adequate inventories and inventory records of all stocks of materials, supplies and equipment of common usage contained in any central or principal storeroom, stockyard or warehouse of the sanitary district; (k) assume such related activities as may be assigned to him from time to time by the board of trustees; and (m) submit to the board of trustees an annual report describing the activities of his office. The report shall be placed upon the official records of the sanitary district or given comparable public distribution. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.18) (from Ch. 42, par. 331.18) Sec. 11.18. The board of trustees is expressly authorized to establish a revolving fund to enable the director of procurement and materials management to purchase items of common usage in advance of immediate need. The revolving fund shall be reimbursed from appropriations of the using agencies. No officer or employee of a sanitary district organized pursuant to this Act shall be financially interested, directly or indirectly, in any bid, purchase order, lease or contract to which such sanitary district is a party. For purposes of this Section an officer or employee of the sanitary district is deemed to have a direct financial interest in a bid, purchase order, lease or contract with the district, if the officer or employee is employed by the district and is simultaneously employed by a person or corporation that is a party to any bid, purchase order, lease or contract with the sanitary district.

Any officer or employee convicted of a violation of this section shall forfeit his office or employment and in addition shall be guilty of a Class 4 felony.

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(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.19) (from Ch. 42, par. 331.19) Sec. 11.19. No department, office, agency or

instrumentality, officer or employee of the sanitary district, shall be empowered to execute any purchase order or contract except as expressly authorized by this Act.

(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.19a) (from Ch. 42, par. 331.19a) Sec. 11.19a. Purchases made pursuant to this Act shall be made in compliance with the "Local Government Prompt Payment Act", approved by the Eighty-fourth General Assembly. (Source: P.A. 84-731.)

(70 ILCS 2605/11.20) (from Ch. 42, par. 331.20)

Sec. 11.20. There shall be a board of standardization, composed of the director of procurement and materials management of the sanitary district who shall be chairman, and 4 other members who shall be appointed by the president of the board of trustees of the sanitary district. The members shall be responsible heads of a major office or department of the sanitary district and shall receive no compensation for their services on the board. The board shall meet at least once each 3 calendar months upon notification by the chairman at least 5 days in advance of the date announced for such meeting. Official action of the board shall require the vote of a majority of all members of the board. The chairman shall cause to be prepared a report describing the proceedings of each meeting. The report shall be transmitted to each member and shall be made available to the president and board of trustees of such sanitary district within 5 days subsequent to the date of the meeting and all such reports shall be open to public inspection, excluding Sundays and legal holidays.

The board of standardization shall: (a) classify the requirements of the sanitary district, including the departments, offices and other boards thereof, with respect to supplies, materials and equipment; (b) adopt as standards, the smallest numbers of the various qualities, sizes and varieties of such supplies, materials and equipment as may be consistent with the efficient operation of the sanitary district; and (c) prepare, adopt, promulgate, and from time to time revise, written specifications describing such standards.

Specifications describing in detail the physical, chemical and other characteristics of supplies, material or equipment to be acquired by purchase order or contract shall be prepared by the board of standardization. However, all specifications pertaining to the construction, alteration, rehabilitation or repair of any real property of such sanitary district shall be prepared by the engineering agency engaged in the design of such construction, alteration, rehabilitation or repair, prior to approval by the director of procurement and materials management. The specification shall form a part of the purchase order or contract, and the performance of all such contracts shall be supervised by the engineering agency designated in the contracts.

In the preparation or revision of standard specifications

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the board of standardization shall solicit the advice, assistance and cooperation of the several requisitioning agencies and shall be empowered to consult such public or nonpublic laboratory or technical services as may be deemed expedient. After adoption, each standard specification shall, until rescinded, apply alike in terms and effect to every purchase order or contract for the purchase of any commodity, material, supply or equipment. The specifications shall be made available to the public upon request.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.21) (from Ch. 42, par. 331.21)

Sec. 11.21. Official ordinances authorized by this Act shall be adopted by formal action of the board of trustees of the sanitary district and shall be published for the information of the public.

(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.22) (from Ch. 42, par. 331.22) Sec. 11.22. Any purchase order or contract executed in violation of this Act shall be null and void. Public funds which have been expended thereon, may be recovered in the name of the sanitary district in any

court of competent jurisdiction.  
(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.23) (from Ch. 42, par. 331.23) Sec. 11.23. The comptroller of the sanitary district shall conduct audits of all expenditures incident to all purchase orders and contracts awarded by the director of procurement and materials management. The comptroller shall report the results of such audits to the president and board of trustees. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.24) (from Ch. 42, par. 331.24) Sec. 11.24. (a) A person or business entity shall be disqualified from doing business with The Metropolitan Sanitary District of Greater Chicago for a period of 5 years from the date of conviction or entry of a plea or admission of guilt, if that person or business entity:

1. has been convicted of an act of bribery or attempting to bribe an officer or employee of the federal government or of a unit of any state or local government or school district in that officer's or employee's official capacity; or

2. has been convicted of an act of bid-rigging or attempting to rig bids as defined in the Federal Sherman Anti-Trust Act and Clayton Act; or

3. has been convicted of bid-rigging or attempting to rig bids under the laws of the State of Illinois or any other state; or

4. has been convicted of an act of price-fixing or attempting to fix prices as defined by the Federal Sherman Anti-Trust Act and Clayton Act; or

5. has been convicted of price-fixing or attempting to fix prices under the laws of the State of Illinois or any other state; or

#### Exhibit 2-Page 9

6. has been convicted of defrauding or attempting to defraud the Federal government or a unit of any state or local government or school district; or

7. has made an admission of guilt of such conduct as set forth in subsections 1 through 6 above, which admission is a matter of record, whether or not such person or business entity was subject to prosecution for the offense or offenses admitted, to; or

8. has entered a plea of nolo contendere to charges of bribery, price-fixing, bid-rigging, or fraud as set forth in subsections 1 through 6 above.

b) "Business entity" as used in this section means a corporation, partnership, trust, association, unincorporated business or individually owned business.

c) A business entity shall be disqualified if the following persons are convicted of, have made an admission of guilt, or enter a plea of nolo contendere to a disqualifying act described in paragraph (a), subsections 1 through 6, regardless of whether or not the disqualifying act was committed on behalf or for the benefit of such business entity:

- 1) a person owning or controlling, directly or indirectly, 20% or more of its outstanding shares; or

- 2) a member of its board of directors; or

- 3) an agent, officer or employee of such business entity.

d) Disqualification Procedure. After bids are received, whether in response to a solicitation for bids or public advertising for bids, if it shall come to the attention of the director of procurement and materials management that a bidder has been convicted, made an admission of guilt, a plea of nolo contendere, or otherwise falls within one or more of the categories set forth in paragraphs (a), (b) or (c) of this Section, the director of procurement and materials management shall notify the bidder by certified mail, return receipt requested, that such bidder is disqualified from doing business with the Sanitary District. The notice shall specify the reasons for disqualification.

e) Review Board. A review board consisting of 3 individuals shall be appointed by the Executive Director of the Sanitary District. The board shall select a chairman from its own members. A majority of the members shall constitute a quorum and all matters coming before the board shall be determined by a majority. All members of the review board shall serve without compensation, but shall be reimbursed actual expenses.

f) Review. The director of procurement and materials management's determination of

disqualification shall be final as of the date of the notice of disqualification unless, within 10 calendar days thereafter, the disqualified bidder files with the director of procurement and materials management a notice of appeal. The notice of appeal shall specify the exceptions to the director of procurement and materials management's determination and shall include a request for a hearing, if one is desired. Upon receipt of the notice of appeal, the director of procurement and materials management shall provide a copy to each member of the review

Exhibit 2 - Page 10

board. If the notice does not contain a request for a hearing, the director of procurement and materials management may request one within 5 days after receipt of the notice of appeal. If a hearing is not requested, the review board may, but need not, hold a hearing.

If a hearing is not requested, the review board, unless it decides to hold a hearing, shall review the notice of disqualification, the notice of appeal and any other supporting documents which may be filed by either party. Within 15 days after the notice of appeal is filed, the review board shall either affirm or reverse the director of procurement and materials management's determination of disqualification and shall transmit a copy to each party by certified mail, return receipt requested.

If there is a hearing, the hearing shall commence within 15 days after the filing of the notice of appeal. A notice of hearing shall be transmitted to the director of procurement and materials management and the disqualified bidder not later than 12 calendar days prior to the hearing date, by certified mail, return receipt requested.

Evidence shall be limited to the factual issues involved. Either party may present evidence and persons with relevant information may testify, under oath, before a certified reporter. Strict rules of evidence shall not apply to the proceedings, but the review board shall strive to elicit the facts fully and in credible form. The disqualified bidder may be represented by an attorney.

*Within 10 calendar days after the conclusion of the hearing, the review board shall make a finding as to whether or not the reasons given in the director of procurement and materials management's notice of disqualification apply to the bidder, and an appropriate order shall be entered. A copy of the order shall be transmitted to the director of procurement and materials management and the bidder by certified mail, return receipt requested. ■-*

g) All final decisions of the review board shall be subject to review under the Administrative Review Law.

h) Notwithstanding any other provision of this section to the contrary, the Sanitary District may do business with any person or business entity when it is determined by the director of procurement and materials management to be in the best interest of the Sanitary District, such as, but not limited to contracts for materials or services economically procurable only from a single source.

(Source: P.A. 95-923, eff. 1-1-09.)

Exhibit 2 - Page 11

**Exhibit 3 to the Intergovernmental Agreement**

Multi-Project Labor Agreement and Memorandum of Understanding

[see attached]

MULTI-PROJECT LABOR AGREEMENT (COOK COUNTY)

With

CERTIFICATE OF COMPLIANCE

\•

\

x

" - CONTAINS:

- 1) MPLA - EFFECTIVE OCTOBER 6,2017
- 2) CERTIFICATE OF COMPLIANCE

GENERAL REQUIREMENTS UNDER THE MULTI-PROJECT LABOR AGREEMENT

The following is a brief summary of a Bidder's responsibilities under, the MPLA. Please refer to the terms of the MPLA for a full and complete, statement of (its requirements.

Your firm. Is required, to complete. fee. Certification of Compliance form that your firm intends to comply with the Multi-Project Labor Agreement. The (Certificate of Compliance must be signed by an authorized Officer of the City of Chicago. The City of Chicago, be

eligible for award. Your firm is not eligible for award. Failure of the Board of Directors to award the contract is not already  
retention of

If the bidder on the contract is not already  
affiliated and is not already

the contract is not already

: affiliated and is not already

Notwithstanding any repair-  
an

Revised October 2017

MPLA-CC-02

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO  
MULTI-PROJECT LABOR AGREEMENT FOR COOK COUNTY

This Multi-Project Labor Agreement ("Agreement") Is entered into by and between the  
Metropolitan Water Reclamation District of Greater Chicago ("MWRD" or "District"), a public  
body, as Owner, in its proper capacity, on behalf of  
whatever tier ("Contractors" and shall be applicable to Construction Work on Covered Projects,  
both  
defined herein, to be performed by the contractor's with each of the undersigned labor  
organizations signatory to the Chicago and Cook County Building and Construction Trades Council

and, as appropriate, the Teamsters Joint Council No. 25, pr ; their affiliates who become signatory hereto (collectively "Unions").

This Agreement is entered into In act W^ recognizes the public 1^

WHEREAS. ^VVRD Is r^P

dewr^uctloryW^

gepgraphjcarbo^

fC^eredPrpjfecfc^

souraome^

covered Pntfertstra^

ItfeWthelr-lrrtere^^

orderlyrnahh^r j^'^'^ti^i^ft^ \* & d^

any 6f>fd.tovered, projects;! and

<?r d^

WHEjREAS> th^^^

and disruption oft Work Is perfrmedty\*he^UWdn^^

trade and geographic JufisoTc^ Project.

Experience has proven the value of stfcftcobSOT undertakings; and

WHEREAS, the Parties aciS^ employee of any Contractor covered under this Agreement, and the District acknowledges that It has a serious and ongoing concern regarding la>p of the existence of a collective bargaining relationship with any of the signatory Unions.

NOW THEREFORE, in order to^rfher these g03ls arid objectives and to maintain a spirit of harmony, leboivroanagement cooperation, and stability, ttle Parties agree as follows:

1. During the term ofthls Agreement. MWRD shall neither contract, nor permit any other person, firm, company, or entity to contract or subcontractfor any Construction Work on any Covered Project under this Agreement, unless such work is performed by a person, finT), or company signatory, or willing to become signatory, to the current applicable area-wide collective bargaining agre.ement(s).with the appropriate trade/craft Unlon(s) affiliated with the Chicago & Cook County Building & Construction Trades Council or, as appropriate, the TeamstHrs'Joint Council No. 25. Copies of all applicable, current collective bargaining agreements constitute Appendix A ofthls Agreement, attached hereto and made on Integral part hereof, and as may be modified from time to time during the term ofthls Agreement-

MPLA-CC-03

September



contractors

Septembers, 2017

2. A contractor or subcontractor which Is a successful bidder with respect to Covered Projects, but
2. which Is not signatory to the applicable area-wide collective bargaining agreements Incorporated herein,
2. sh8ll be required to' execute such applicable area^wWe collective bargaining agreements within seven (7)

2. days of being designated a successful bidder, If such an agreement Is not executed within that time

2. period, said contractor or subcontractor/. vtf^ In no, event shall a contractor or subcontractor be ^ contractor or subcontractor^^

3. During; the term of this Agreement ^ e-#> no UR^s||n^ry heretpnr-any'of its merhb.ere, offlcep, stevraids; agents;; r^^ mafotoWorija

cessatton,Qf )^i&\$ah of^dj#^|r^ c6yereq\bythis Agrarmritfdr3ny; 're&fe b 3rgaihlg%eemerifc :ero#oye&^ event of atfe^^s^ agreement, njPadv^^ arty feguf n^^ wpr\*ingpni\*)e&y^^ " ;v . '.

4. -Each Unlon^r^fiejj^^

cmpibytog^ efforts'tfhcW;^ immned^tec^s^ oncoveredl^oje^r^ slowdpwn/w^^i]^ otherworkactionias,uiaurjrip^^ furtherW of employees to cfP^ ^ch:^ agreement

5. Any Contractor sfghatbry pr other>^||wn& abide by any provisions

5. ofthls Agreement m^ regulationsshaRbeto rules and regulations shall not be |ncpTO|sfen^witr>-.% J^s;pf.^ijs; Agre^ area-wide collective baTgiilhinga^ Untpn employees wfip via ... regulations. Such diseij^e^d^ procedure of the appliraM^^^ employee's violation of t^^ subject to review or dlstUrtedy ^nstm^ irry<Coyertd Project site under this Agreement shell continue without disruption or hindrance of any kind during any Grievance/Arbitration procedure.

September 6,2017

6. The Unions understand and acknowledge.that the District's Contractors are responsible to perform Construction Work as. required by, the pbtjrct The Contractors have complete authority to do the following, subject to> District approval, if required; and If consistent with the terms of the collective bargaining agreements attached hereto:

3; Plan, direct, and control the operations of all work;  
b. Hire and lay off employees as appropriate to meet work requirements;  
c. Determine methods;  
d. Determine the;  
e.; Require all employees to be;  
f. Refuse; ; Comply;  
g. If the City or the County is not a party to this Agreement, the City or the County shall not be bound by the terms of this Agreement.

7. Nothing;

collective bargaining agreement. V. v

8. This agreement is a contract.  
Contract is a contract.

9. The term of this Agreement shall be for a period of \_\_\_\_\_ year to

9. year-unit - \$100,000  
advance of any.  
Agreement shall continue to be in effect until the end of the  
Covered Project by the District : •

10. In the event a dispute shall arise between a contractor or subcontractor any signatory union and/or fringe benefit fund: as to the obligation to provide the benefits provided for under the appropriate collective bargaining agreement;  
signatory hereto of a contract;  
upon the contract; and to the general contractor,

ii-  
11. in the event of a jurisdictional dispute, the parties shall take all steps necessary to promote the resolution of the dispute.  
Jurisdiction; Part of the dispute shall be achieved in accordance with the terms of paragraph nine of the Joint Conference Board Standard Agreement between the Chicago & Cook County Building Trades Council and the Construction Employers' Association, attached; hereto as Appendix B, and as may be modified from time to time during the term of this Agreement

4

MPLA-CC-06

September 6, 2017

12. This Agreement shall be incorporated into and become a part of the collective bargaining agreements between the signatory hereto and Contractors and their subcontractors: In the event of any inconsistency between this Agreement and any collective bargaining agreement, the terms of this Agreement shall supersede and prevail in the event of any inconsistency between this



utilize the maximum number of apprentices on Covered Projects as permitted, under the applicable area-wide collective bargaining agreement, where feasible and practical.

17. Neither the District nor the Contractors shall discriminate against any employees of a

17. protected class. Including but not limited to the basis of race, creed, color, national origin, age, or

17. sex, In accordance with all applicable state and federal laws and regulations.

18. If any employee or Jurisdiction

becomes a final

render, the,

enforce a

19. Under the

pistrict shall not

19. believe -

19. shall be

or? any other

Under the

act or take

r • ^

20. The Project is a

the Jobsite. It is a

work environment

for the employees

regulations.

.... : J • ..

21. The use or possession of alcohol while working and the conduct of any other illegal

21. activities at the Jobsite is strictly prohibited

measure consistent

21. with the terms of the applicable area-wide collective bargaining agreement to ensure that the Job site is

21. free of weapons, and

22. Each Union representing workers engaged in Construction Work on a Covered Project is bound to this Agreement with full authority to negotiate and sign this Agreement with the District

23. All Parties represent that they have the full legal authority to enter into this Agreement

24. This document, with the attached Appendices, constitutes the entire Agreement of the Parties and may not be modified or changed except by subsequent written agreement of the Parties.

September 6, 2017

25. Having been adopted by the Board of Commissioners on August 3, 2017, and ratified and effective as of the last date on the signature page, this agreement supersedes any other Multi-Project Labor Agreement previously entered into by the parties as of the date of ratification.

MPLA-CC-09  
**Septembers, 2017**

The undersigned, as a Party hereto, hereby agrees to all the terms and conditions of this Agreement

Dated this 15th day of September, 2017 in Chicago, Cook County, Illinois.

On behalf of the Metropolitan Water Reclamation District of Greater Chicago

David St Pierre Executive Director Management

Approved as to Form and Legality

Darlenc A. LoGascip

Director of Procurement and Materials

&

*Helen Sbi^a>- Wri/bl tojg Head Assistant Attorney- TM*

Susan T. Morakalis Acting General Counsel

Frank Avila, Chairman of Finance

Mariyana Iffipyropoulos

Chairman, Committee on Labor and Industrial Relations

Approved

Mariyana T. ISgsSS33I55^Sd^

MPLA-CC-10

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement ,  
Dated this 15th day of September, 2017 in Chicago, Cook County, Illinois.

On behalf of: Teamsters local Union No. 731 Labor  
Organization

**APPROVED:**

**Its Duly Authorized Officer Terrence J. Hancock, President**

MPLA-CC-11

**September 6,2017**

**The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement**

**Dated this the 13 th day of September 2017 in Chicago, Cook County, Illinois.**

**On behalf of: Sprinkler. Fitters Union Local 281, U.A. Labor Organization**

**APPROVED:**

**September 6,2017**



The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the /o^.day of Scp^ 2017 in Chicago, Cook County, Illinois.  
v

On behalf of:

Labor Organization

APPROVED:

Its Duly Authorized Officer

September 6,2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the H\_ day of So-P/U^kr. 2017 in Chicago, Cook County, Illinois.

On behalf of: jUtttoS^Uo^f ftfllOfeCS // Labor Organization

APPROVED:

Ntv^, ^ g  
Its Duly Authorised Officer

September 6,2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.  
Dated this the day of Sc^T< . 2017 in Chicago, Cook County, Illinois.

On behalf of: foo^QUS /SfV U'd Labor Organization

APPROVED:

MPLA-CC-15

September6,2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the^^day of ^7^^g>??2017 in Chicago, Cook County, Illinois.

On behalf KfoT^P^/TTS^ h<W. -fC?7 Labor Organization

APPROVED:

MPLA-CC-16

September 6, 2017

The undersigned, as a Party hereto, agrees to ail the terms and conditions of this Agreement

Dated this the /^^-day of ^^jfeje^A&ftl in Chicago, Cook County, Illinois.

On bebalfof: P<\* \ k4</< / G\o\*yH^c Labor Organization

APPROVED;

9

MPLA-CC-17

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement

Dated this the 15th day of September 2017 in Chicago, Cook County, Illinois.

On behalf of: CUBA League of Women's Labor Organization

APPROVED:

CC-18

9

September 6,2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the , day of 2017 in Chicago, Cook County, Illinois.

On behalf of: frw&Mfcte Lccal 1 Labor Organization

9

APPROVED:

MPLA-CC-19

September 6,2017

The undersigned, as a Party hereto, agrees to ail the terms and conditions of this Agreement.

Dated this the > 2017 in Chicago, Cook County, Illinois.

On behalf *Mm\*? &\*\*>&Jf\*>*  
Labor Organization

APPROVED:

S^J^ Duly Authorize

: MPLA-CC-20

September 6,2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement

Dated this the ^^ttay of<^4^yi^2017 in Chicago, Cook County, IUinoi On behalf of:  
Labor Organization

MPLA-CC-21

**APPROVED:**

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the /ch~dav of ^p^f^T- - 2017 in Chicago, Cook County, Dlinois.

On behalf of j^C^~Labor Orgaioization "" ~~

APPROVED:

Its Duly Authorized Officer



MPLA-CC-22

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement

Dated this the 3 day of September, 2017 in Chicago, Cook County, Illinois.

On behalf of:

Labor Organization

APPROVED:

Its Duly Authorized Officer

MPLA-CC-23

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the 1<sup>st</sup> day of September, 2017 in Chicago, Cook County, Illinois.

On behalf of:                    4- Fft>T>4- Z/iS<\*V-Wcs Y.6CM\ \$ I \*7  
Labor Organization

APPROVED:

Its Duly Authorized Officer

9

MPLA-CC-24

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the 15th day of September, 2017 in Chicago, Cook County, Illinois.

On behalf of: American Federation of Teachers, Labor Organization

APPROVED:

MPLA-CC-25

September 6, 2017

The undersigned, as a Party hereto, agrees, to all the terms and conditions of this Agreement

Dated this the 1<sup>st</sup>, day of September, 2017 in Chicago, Cook County, Illinois.

On behalf of: L<sup>1</sup> 13<sup>th</sup> 5 ft -C\J Labor Organization

APPROVED:

Its Duly Authorized Officer

MPLA-CC-26

September 6,2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement

Dated this the Z2»day of .

*On behalf of:*           *r/ji/T //]?<// ^^tf/AfiU*

Labor Organizatibri

ly-Authorized Officer

APPROVED

MPLA-CC-27  
September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the ^ day of ScO7aw«^0?2017 in Chicago, Cook County, Illinois.

**On behalf of ^-^/tt,^^^ Labor Organization**

APPROVED:

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement.

Dated this the 2017 m Chicago, Cook County, Illinois.

*On behalf of: R/Lf AIKSo Q fa-RS*  
Labor Organization

APPROVED:

September 6, 2017

The undersigned, as a Party hereto, agrees to all the terms and conditions of this Agreement  
Dated this the      day of Kytbthrj-'. 2017 in Chicago, Cook C^nnty, Illinois.

On behalf of: TTZr/,rr»\*/fi,rf/Tfr^^f-dzcrftA"^//^^^y J^o/o^c Labor Organization

APPROVED;

Its Duty Authorized Officer

MPLA-CC-30

September 6, 2017

APPENDIX A



For copies of Collective Bargaining Agreements, please goto the. jyiWRp Website.and click on:

Freedom of Information Art {FOIA}/Categbiry of ReCQrds

10

MPLA-CC-31

Septembers, 2017

DocuSign Envelope ID: SDD9C849-6998-4E3MA30-1E042D25642S

**JOINT CONFERENCE BOARD STANDARD  
AGREEMENT 6/1/15-5/31/20**

**Construction Employers\* Association And  
Chicago & Cook County Building^ Construction Trades  
Council**

DocuSign Envelop\* 5D09Ca4^6S38-4E39-0A30-1E642O2554Z5

**The Standard Agreement .between  
The Construction Employers' Association, and  
The Chicago # Cook County Building &.ConsWtionTra^  
Establishing The Joint Conference Board**

DocuSign Envelop\* ID: SDD9C849-6998-4E3e-8A30-1E642D25e435

**CHRONOLOGY**

**ADOPTED NOVEMBER 18,1926 AMENDED AND READOPTED JANUARY 11,1929  
AMENDED AND READOPTED JUNE 24,1942 READOPTED APRIL 28, 1947 AMENDED  
AND READOPTED MARCH 19,1952 READOPTED FEBRUARY 12,1957, AMENDED AND  
READOPTED MAY 13,1958 AMENDED AND READOPTED FEBRUARY 11, 1960  
AMENDED AND READOPTED MAY 21,1963 AMENDED NOVEMBER 16,1965  
AMENDED MARCH 14,1967 AMENDED AND READOPTED MARCH 4, 1968 AMENDED  
AND READOPTED NOVEMBER i i , 1971 READOPTED NOVEMBER 20,1973  
READOPTED DECEMBER 12,1978 READOPTED APRIL 12, 1983 READOPTED MARCH**

31,1988 AMENDED AND READOPTED APRIL 25,1989 REFORMATTED, AMENDED  
AND READOPTED JUNE 1,1994 AMENDED AND READOPTED JUNE 1,1999  
AMENDED APRIL 1,2003 AMENDED AND READOPTED JUNE 1,2004  
AMENDED AND READOPTED JUNE 1,2005 . AMENDED AND READOPTED  
JUNE 25,2008 AMENDED AND READOPTED FEBRUARY 15,2010 . AMENDED  
AND READOPTED MAY 28,2015

Expiration Date: MAY 31,2020

DocuSign Envelope ID: 5DD9C649-6998-4E39-8A3CME642D258425

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MPLA-CC-36

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## PREAMBLE

This Agreement is entered into to prevent strikes and lockouts and to facilitate peaceful adjustment of jurisdictional disputes in the building and construction industry and to prevent waste and unnecessary avoidable delays and expense, and for the further purpose of at all times securing for the employer sufficient skilled workers and so far as possible to provide for labor continuous employment, such employment to be in accordance, with the conditions and at the wages agreed upon, in the particular trade or industry; conditions may prevail in the construction industry, that costs may be as low as possible consistent with fair wages and conditions and former to establish the necessary procedure by which these ends may be accomplished.

This Standard Agreement shall be considered, and shall constitute a part of all agreements between Employers and Labor Unions, members of the International Union of Elevator Constructors, the Association, and the Chicago & Cook County Trades Department. It is the intent of the parties to this Agreement to provide for the necessary protection of the rights of any person who may be affected by the Agreement under the National Labor Relations Act.

It is the intent of the parties to this Agreement to provide for the necessary protection of the rights of any person who may be affected by the Agreement under the National Labor Relations Act. This Agreement shall be considered, and shall constitute a part of all agreements between Employers and Labor Unions, members of the International Union of Elevator Constructors, the Association, and the Chicago & Cook County Trades Department. It is the intent of the parties to this Agreement to provide for the necessary protection of the rights of any person who may be affected by the Agreement under the National Labor Relations Act.

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## DECLARATION OF PRINCIPLES

The Principles contained herein are fundamental and no articles or section in this Agreement or In the collective bargaining agreement pertaining to a specific trade or craft shall be construed as being in conflict with these principles. In the event any conflict exists between this Agreement and any collective bargaining agreement subject to the Provisions of this Agreement and the dispute resolution provisions contained; hereunder,, and pertaining to a specific trade or craft concerning the resolution of jurisdictional • disputes, the parties specifically agree that the terms of this Agreement are exclusive and supersede any other provisions or procedures relating to the settlement of jurisdictional, disputes contained in such collective bargaining agreement.

L There shall be no limitation as to the amount of work a worker shall perform during the work day. II. There shall be no restriction on the use of machinery, tools or appliances; III. There shall be no restriction on the use of any raw or manufactured material except prison made.

TV. No person shall interfere with workers during working hours. V. The use of apprentices shall not be prohibited. VI. The foreman shall be the agent of the employer.

VII. The worker is at liberty to work for whomever he or she sees, fit but subject to demand and receive the wages agreed upon in the applicable agreement.

VOL. The employer is at liberty to employ and discharge an employee if the employer sees fit.

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## ARTICLES OF AGREEMENT . ARTICLE I

Therefore, with the Preamble and Declaration of Principles as part of and fundamental to this Agreement, the parties hereto hereby agree that there shall be no lockout by any employer, or strikes, stoppage, or the abandonment of work either individually or collectively, by concerted or separate action by any union without arbitration of any jurisdictional dispute as hereinafter provided.

### ARTICLE I

The parties, hereto hereby agree, that in the manner herein set forth, they and the parties who they present will submit to arbitration all jurisdictional disputes that may arise "betwixt" them as to any misunderstanding as to the meaning or intent of all, or any part of this Agreement, and they further agree that work will go on undisturbed; during which arbitration, and that the decision of the arbitrator shall be final and binding on the parties hereto;

### ARTICLE II

Paragraph 1> Should a Union affiliated with the GTOIMCIL abandon the work

subject to the following:

employee who collectively, or jointly, in action, i.e. while working, the employer shall have the right to fill the position.

with workers who will agree to work for the employer, and the right to siffrH^

Paragraph^ The Union shall have the right to take the employees -whoin it reRrewnts from the wprk for the purpose of collecting wages and fringe benefib due^but'^u^-matter shall nnmediatery be referred to arbitration. Should there ^a^^^^p5ih> s-amount due, the matter shall be first referred to arbitration as herein set-forth.

Paragraph 3, The parties recognize the importance of having all work performed; in a satisfactory manner by competent craftsmen. Because the unions affiliated with the Council have through apprenticeship and other training programs consistently striven to create an adequate supply of such skilled workers, and because it is desirable that the unions continue to do so, the Association, for itself and for each employer whom it represents agrees, to the extent permitted by law, that it will contract or subcontract any work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work, only with or to a contractor who is a party to a cpMeptiye bargaining agreement with a union affiliated with the Council and, accordingly, Is bound by all me terms and provisions of this Standard Agreement.

i

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#### ARTICLE IV

The parties recognize the importance of having available and furnishing at all times during the life ofthls Agreement sufficient skilled workers, capable of performing the work of their trade, and to constantly endeavor to improve the ability of such workers and further to have in the making, through apprenticeship training, wortera:.whQ;c^'.eh^^-trade properly equipped to perform the work, and to the extent pdssiple, the parties agree to do everything within their power to cooperate in carrying out these purposes. Joint apprenticeship, committees shall have the right to maintain schools for the training of apprentices registered under the terms of the particular collective bargaining agreement involved and such apprentices shall be considered skilled and qualified journeymen when adjudged competent by a committee composed of the members of theparties to the particular collective bargaining agreement involved. However; this article- shall nAt;be construed to disturb present systems wherein the labor organization which is a party t<>.the particularcollective bargaining agreement involved compels apprenti(^!j^a<!^^tilicf6 ^sonooK

#### ARTICLE V

A JoWf.Oonferehce Board is hereby created by agreement betweenMer^ijpeii^tiffij^d; the Council which;shall be blnding upon the members and affiliates:^-f^^fi^i^^>:-:: ^rejpyagr^ w&Tre^gni^^ Joint ConfeenceB  
fip;afs^ A;rtfcie.;\^' :^i^^,(\|<^^p|^|^-  
iSonlf^^ by the Secretary of th\$Bqar&-:^!jt:r^^|toJ^^i^.  
and;all :.e^^ shall be borne equally.

#### ARTICLE VI

The Joint Conference Board shall be responsible for the administration of this Agreement. The primary concern of the Joint Conference Board shall be the settlement of jurisdictional disputes by arbitrators selected by the Board. Decisions rendered by any arbitrator under this Agreement appointed by the Joint Conference Board relating to jurisdictional disputes shall be only for the specific job under consideration and shall become effective immediately and complied with by all parties. In rendering a decision, the Arbitrator shall determine:

- a) First whether a previous Agreement of Record or applicable agreement, including a disclaimer agreement, between the National or International Unions to the dispute governs.
- b) Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable Agreement of Record or agreement between the National Or International Unions to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a

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previous Decision of Record governing the case, the Arbitrator shall give equal weight to such Decision of Record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds, that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the Decision of Record and established trade practice in the industry rather than the prevailing practice in the locality.

- c) In order to determine the established trade practice in the industry and prevailing practice in the locality, the Arbitrator may rely on applicable, agreements between the Local Unions involved in the dispute, prior decisions of the Joint Conference Board for specific jobs, decisions of the National Plan and the National Labor Relations Board or other jurisdictional dispute decisions, along with any other relevant evidence or testimony presented by those participating in the hearing.
- d) Only if none of the above criteria is found to exist, the Arbitrator shall then
- d) consider that because efficiency, cost or continuity and [a. ^u ^ ^ ^ j ^ e]
- d) essential to the well being of the industry, the interests of the consumer or the public
- d) practices of the employer shall not be ignored. - \*

Agreements, of Record are those agreements between National and [I {t(ei ^ | djon, ^ p ^ } ^ ,  
t i i t ^ h ^

A i \$ ^ O ^ I ^

■ Book. ; & ich, • Agreements of Record are binding on: tin ^ lo 7 m ^ a ! % ^ j ^ ^ j ^ : .  
' the / Sc t t f g ^ ^ Construction ■ Indus ^ h ^ ( t j ^ 8 ^ ^ i p ! ^ ' : .  
Plan ^ j the National Plan's predecessor joint boards or stipulated to the J p & i G Q t t f t & Q < & Board V

Provisions of Record are applicable only to the crafts signatory to the agreements. Decisions of Record are decisions by the National Association of Building and Construction Trades Department and the National Plan; Decisions of Record are applicable to all crafts.

The Arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranked criteria are relied upon, the Arbitrator shall explain why the higher-ranked criteria were not deemed applicable. The Arbitrator's decision shall only apply to the job in dispute. Such decisions of the Arbitrator shall be final and binding subject only to an appeal, if such an appeal is available under conditions determined by the Building and Construction Trades Department of the American Federation of Labor and Congress of Industrial Organizations under the National Plan or any successor plan for the settlement of jurisdictional disputes.

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## ARTICLE V

This is an arbitration agreement and the intent of this agreement is that all unresolved jurisdictional disputes must be arbitrated under the authority of the Joint Conference Board and that the decisions, subject to the right of appeal provided in Article VI, shall be final and binding upon the parties hereto and upon their affiliates and the members of such affiliates, and that there shall be no abandonment of the work during such arbitration or in violation of the arbitration decision. The Joint Conference Board shall administer the neutral arbitration system of this agreement. Any party bound to this Agreement through a collective bargaining agreement with any Local Union affiliated

with the Local Union shall be bound to this Agreement for all jurisdictional disputes arising

anywhere. The Employers; bound to this Agreement shall require that this part of all agreements, ^

any and covenant not to sue the Board; Any damage to the Board if fact shall include, but are not limited to, the cost of legal fees and attorneys fees incurred as a result of said legal proceedings.

Paragraph 1. The annual meeting of the Joint Conference Board shall be held in January of each year.

*Paragraph 2- The parties hereto shall designate an equal number of representatives to the Board.*

The members of the Board shall be designated by the Association and the Council in written communication of the respective organizations. Each representative

shall

also select from among its members a Vice Chairman. The members shall serve for one year or until re-elected.



*successors have been selected.*

"" "" "" "■"

Paragraph i - At the annual meeting, the Association and Council shall each name at least five and up to ten impartial arbitrators.

Paragraph 4 - In the event the Chairman or Vice-Chairman is unable to serve by reason of resignation, death or otherwise, a successor may be selected for the remainder of the term by the party Which made the original selection. Should a member of the Joint Conference Board be unable to serve, because of resignation, death or any other reason, the successor shall be selected by the Association or Council respectively in which such member holds membership.

Paragraph 5 - Should any member of the Board for any reason be unable to attend any meeting of the Board, the President of his respective organization shall be empowered to name a substitute for each absentee for that meeting.

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Paragraph 6 - Meetings of the Board may be called at any time by the Chairman, Secretary or three members of the Board. Seventy-two hours written notice of such meeting must be given to each member of the Board.

Paragraph 7 - Twelve members of the Board, six from each of the parties, present at the executive session, shall be a quorum for the transaction of business. The Chairman, or Vice-Chairman, when presiding, shall not be counted for the purpose of determining a quorum. Whenever the number of members present from each party at the executive session are unequal, the party with the fewer members present shall be entitled to cast a total number of votes equal to the number of the present members of the other party with the additional votes of said party being cast in accordance with the vote of the majority of its members who are present.

Paragraph 8 - If it is brought to the attention of the Chairman that any member (other than the Chairman) is not impartial with respect to a particular matter before the Board, the Chairman may excuse such member from the executive session if the Chairman concludes that such member has a conflict of interest with respect to such matter.

Paragraph 9 - Should a jurisdictional dispute arise between the parties hereto, among or between any members or affiliates of the parties hereto, or among or between any members or affiliates of the parties hereto and some other body of employers; of employees, the disposition of such dispute shall be as follows:

- a) The crafts involved shall meet on the jobsite or a mutually agreed location to resolve the jurisdictional dispute.
- b) if the said dispute is not settled it shall be submitted immediately in writing to the Secretary of the Joint Conference Board. Unless agreed to in writing (correspondence, email, etc.) by the trades involved in the dispute, the trades and contractors shall make themselves available to meet within 72 hours at a neutral site with representatives of the Chicago & Cook County Building & Construction Trades Council and the Construction Employers' Association to resolve this

jurisdictional issue.

- c) Failure to meet within seventy-two (72) hours of receiving written notice 6r;e- i mail to the meetings contemplated in "a" or "b" above will automatically advance the case to the next level of adjudication.
- d) Should this jurisdictional issue be unresolved , the matter shall, within 72 hours not counting Saturday, Sunday and Holidays, hereafter, be referred to an Arbitrator for adjudication If requested in writing by any party. The Arbitrator shall hear the evidence and render a prompt decision within forty-eight (48 hours) of the conclusion of the hearing based on the criteria in Article VI. The arbitrator chosen shall be randomly selected based on availability from the list

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submitted in Article VII Paragraph 3. The decision of the Arbitrator shall be subject to appeal only under the terms of Article VI. The written decision shall be final and binding upon all parties to the dispute and may be a short form decision. The fees and costs of the arbitrator shall be divided evenly between the contesting parties except that any party wishing a full opinion and decision beyond the short form decision shall bear the reasonable fees and costs of such full opinion.

- c) Should said dispute not be so referred by either or both of the parties, the Joint Conference Board may, upon its own initiative, or at the request of others interested, take up and decide such dispute, and its decision shall be final and binding upon the parties hereto and upon their members and affiliates as provided for in Article VI.

In either Circumstance all of the parties are committed to a case until it is finalized, even if there is an appeal. However, b cases of jurisdictional or other disputes between a union and another union, which is a member of the same International Unldiji the matter in dispute shall be settled in the manner set forth by their International Constitution; but there shall be no abandonment of the work pending such settlement

Paragraph 10 - All interested parties shall be entitled tp make presentations to the Arbitrator. Any interestedsparry presentat the hearing, whether making a presentation or not, bysuch presence shall be deemed to accept the jurisdiction of the arbitrator, and to agree to be bound by Its decision and further agrees to be bound by the Standard Agreement, for that case only if not otherwise so bound;

Paragraph II- Upon approval of the Arbitrator other parties not directly Involved in the dispute rhay.be <<http://rhay.be>> hyyited to be present during the presentation and discussion portioipsbfan arbitration hearing. Attorneys shall not be permitted to attend or participate in any portion of a hearing-Paragraph 12 -At ho time shall any party to a pending dispute unilaterally or Independently contact the Arbitrator assigned to hear the case. AH inquiries must be submitted to the Secretary of the Joint Conference Board.

Paragraph 13 - The Joint Conference Board may also serve as a board of arbitration in other disputes, Including wages, but only when requested to do so by all parties involved in the particular dispute or controversy. It is not the intention of this Agreement-that the Joint Conference Board shall take part in such disputes except by mutual consent of all parties involved.

## ARTICLE Vin

Paragraph 1 - The duly authorized representatives of members of affiliates of either party hereto, if having in their possession proper credentials, shall be permitted to visit jobs

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during working hours, to interview the contractor or the workers, but they shall in no way interfere with the progress of the work.

Paragraph 2 - The handling of tools, machinery and appliances necessary. In the performance of the work covered by a particular collective bargaining agreement, shall, be done by journeymen covered by such agreement and by helpers and apprentices In that trade, but similar tools, machinery and appliances used by other trades in the performance of their work shall be handled in accordance with the particular collective bargaining agreement of that trade.

Paragraph 3: - Iii the interest of the public economy and at the discretion of the employer or foreman, all small tasks covered by a particular collective bargaining agreement may be done by workers or laborers of other trades, if mechanics or l|borets.ofi(hI^irj^B^e. not on t^^I(^g^orjpKb\it.\$^ |ae not to be of longer dun&on u^ any'one day. The Joint Cortierenc\* Board may render a decision irivpiving.a cbmppsie; crew.

Paragraph 4^

of Agreement be stipulated to. the Standard Agreement%d.^e;?pjnt Cbrif^ncerBPard; All current members,.pf the Chicago and ^-^^B^^- .CpigrG^/^Tr"adM Council, and their affiliates,; by this Agrarhent ire stjpatai^^.: ^: 'M^^c^B^, ^J<4nt ^rn'erence Boards for tile t^^f^J^a^^04.i Agr/e\$e\$C and atffliares pf.jtj}ei p^0jSS0g

fb^lItm'gMgelstipuktirujmpsepare'w

BpaTrti^illbe filed with the Secretary of the Joint Conference B^ard^ of the Joint Conference Board appointments. Current trade or aaft agreements will ■ prevail as intoto agreements in the event labor negotiations are. incpmplete or in. process at tietime of tile annual meeting.

Paragraph S - All members and affiliates of the parties with labor agreementscpntamjng language stipulating those parties to the Standard Agreement smdJpinV&h^ shall remain Btipuited for the term of the current Standard Agreement. Ahy.menlbers or affiliates'of the parties who negotiate language stipulating the parties to the Standard Agreement and/or the Joint Conference Board in their area labor agreement shall remain stipulated for iho term of the current Standard Agreement Any Association that incorporates Standard Agreement and/or Joint Conference Board stipulation language into their collective bargaining agreement will automatically have representation on the Joint Conference Board.

Paragraph 6 - Only those crafts with stipulation language in their area labor agreements will be allowed to bring jurisdictional dispute cases to the Joint Conference Board; Those crafts without stipulation language in their area labor agreements will be allowed to participate If a jurisdictional

dispute case is brought against their craft and will have the right to appeal any decision, If such an appeal is available, as provided In Article VI of this Agreement

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Paragraph 7 - This agreement applies only to work performed within Cook County, Illinois.

Paragraph 8 - As herein before provided in Article VII^ decisions or awards as to jurisdictional claims and decisions determining whether or not said decisions or .awards have been, violated rendered by the JointConference Board shall be final, binding and conclusive on all the parties hereto, on all of their members and affiliates, and oriall employers subject only to the right of appeal herein provided for in Article VI.

Paragraph 9 - To further implement the decision of the Joint Conference Board;It is agreed that any party hereto, any of their members or affiliates, and any employer, may-at any timefile a Verified Complaint in writing with the Joint Conference Board alleging a violation bfa decisfori or award preyioudy made,. The. Board sha!l.U»9r«^r^Ti^^>jEL'

hea"ring,,to be-h.dld ofreceipt of die Verified G^b\_i^]^^-fj^^<io>;  
the^ alleged yipJaripri r and shall notify An A\$itrator^  
the tiine and^p^ notice. All parties shall be>giyen ^  
testify aridm^torpr^s^tdQcHu^entary eyidence.rplatin^ •  
within forry^ight ;(48) hp after the. coholu^ sli'alVr^nl^av- ,  
written decision ^ ui'the matter and shall state whether or not therehas b^e^ ^|pj^^vpf;  
itsprior^^decisipnprawBjdi Copies of the decision shall be served.byceiti.fjeti;^  
perscn^ s^mcfej.uppn ; ;

Paragraph ! 6 -ishould.the Arbitrator determine that there has beep a violatiqa-Ofitijie-. Board^s prior decision or award, the Arbitrator shall order irрмаedlate con\$pli^ offendmg par^pr p ,arties. The Arbitrator may take one.or moreoftiie fonbw^g cptirses of actibhm order tpiefnbrec

- a) The Arbitrator may assess liquidated damages not to exceed \$5,000 fpreacl's violation by individual members of, or employees represented ^ &e.p^w ^ hereto, and may assess liquidated damages not to exceed \$10,000 for each violation by either party hereto, or any of Its.officers or representatives.- If a,fjne Is rendered by the Arbitrator\* it should be commensurate with the seriousness'of the violation, having a relationship to lost hours for the Unions and lost efficiency for the employer. Each of the parties hereto hereby agrees for itself, and its members; to pay to the other party within thirty days any sum, or sums, so assessed'be'cause of violations of a decision or award by itself, its officers, or representatives;or Its member or members. Should either party to this agreement, or any of its members fail to pay the amount so assessed within thirty days of its assessment, the party or member so failing to pay shall be deprived of all the benefits of this agreement until such time as the matter is adjusted to the satisfaction of the Arbitrator.

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- b) It may order cessation of all work by the employers and the employees on the job or project involved.

Paragraph II - All Notices under this Agreement shall be in writing and sent by the Administrator of the Joint Conference Board via facsimile or email. For all notifications to affiliates of the Chicago & Cook County Building and Construction Trades Council the Administrator may rely upon the facsimile numbers, addresses and email addresses in the current directory of the Council. For notifications to all contractors and subcontractors, the Administrator may rely on corporate information on the Illinois Secretary of State website or other appropriate databases. Original Notices of all Joint Conference Board decisions will be sent to each of the parties involved via certified mail. The notice provisions shall not include Saturday, Sunday or legal holidays;

Paragraph 12 - The following days shall be recognized as legal holidays: New Years, Day; Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day..

Paragraph 13 - The Board shall have no authority to undertake any action affecting the affected parties of its decision, including findings, briefs or awards of the Board without the prior approval of the prevailing party. The prevailing party shall be entitled to the non-prevailing party's fee, if the fee is otherwise required by the applicable statute.

attorney's fees, and any other expenses incurred by the Board in those proceedings\* Paragraph 14-

The

parties to the dispute, the primary responsibility for the judicial determination of the arbitrability of a dispute and the jurisdiction of the Joint Conference Board shall be by the party requesting the Board to hear the underlying jurisdictional dispute. If all of the parties to the dispute do not attend the arbitration hearing or otherwise agree in writing that the parties are stipulated to the Joint Conference Board and Standard Agreement, the affected party or parties may proceed at the Joint Conference Board even in the absence of one or more parties to the dispute. In such instances, the issue of jurisdiction is an additional item that must be determined in the first instance by the Arbitrator who shall set forth basis of his determination in his decision. The Joint Conference Board may participate in any proceedings seeking a declaration or determination that the underlying dispute is subject to the jurisdiction and process of the Joint Conference Board. In any such proceedings, the non-prevailing party and/or the party challenging the jurisdiction of the Joint Conference Board shall bear all the costs, expenses and attorneys fees incurred by the Board in establishing its jurisdiction. The provision of Paragraph 13 regarding obtaining attorney fees shall apply.

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Paragraph 15 - It is agreed by the parties hereto that this agreement shall remain in full force and effect until June 1, 2020 unless otherwise amended by agreement of parties.

IN WITNESS WHEREOF, the parties have caused this document to be executed at Chicago, Illinois this 28th day of May, 2015,

CONSTRUCTION EMPLOYERS' ASSOCIATION

- DocuSign by:

V-ymktrrniutn

BY Charles M. Usher

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CHICAGO & COOK COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL

-DoojStciiMrfbyi

■JUCMGGWJPWt..

BY Thomas Villanova

MPLA-CC-48

Contract No.

CERTIFICATE OF COMPLIANCE WITH MULTI-PROJECT LABOR  
AGREEMENT (MPLA)

I/WE \_\_\_\_\_ hereby acknowledge that I/WE

(Name of company)

have read the Metropolitan Water Reclamation District of Greater Chicago's Multi-Project Labor Agreement. I/WE and all my/our subcontractors certify that we are in compliance with the Agreement in that I/WE and all my/our subcontractors have agreed to be bound by and operate under a current collective bargaining agreement with a union or labor organization affiliated with the AFL-CIO Building Trades Department and the Chicago and Cook County Building and Construction Council, or their affiliates which have jurisdiction over the work to be performed pursuant to this Contract, (hereafter referred to as a "participating trade group") and shall continue to do so during the duration of the Contract.

State the name of the participating trade group(s) that your firm is currently signatory with in order to

comply with the MPLA: (e.g., Operating Engineers 150); \_\_\_\_\_

..f .....

(Identify all such participating unions or labor organizations. Attach a separate sheet if necessary.)

If your firm is not currently signatory with a participating union or labor organization, complete the following:

I intend to comply with the MPLA by;

Entering into a collective bargaining agreement with the following participating trade group(s): \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

(Identify all such participating unions or labor organizations. Attach a separate sheet if necessary);

Name of Company or Corporation

By:

Signature of Authorized Officer

Attest:  
Secretary

Dated:

Revised October 2017

MPLA-CC-49

**Exhibit 4 to the Intergovernmental Agreement**

District's Affirmative Action Requirements and Affirmative Action Ordinance

[see attached]



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AFFIRMATIVE ACTION ORDINANCE REVISED APPENDIX D OF  
THE  
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

AS REVISED JUNE 4, 2015

AFFIRMATIVE ACTION ORDINANCE REVISED  
APPENDIX D  
OF THE  
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER  
CHICAGO

Section 1. Declaration of Policy

Whereas, it is the policy of the Metropolitan Water Reclamation District of Greater Chicago (the "District") to ensure competitive business opportunities for small\*, minority^and women-owned business enterprises in the award and performance of District", contracts^ to prohibit discrimination on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation; yet^r^tt^- discharge status\* association with anyone with these characteristics, or any other^ ' legally protected characteristic in the award of or participation in District contracts, and; to abolish barriers to full participation in District contracts by all person, regardless of race, ethnicity or sex;

Whereas^the District pursuant to its authority under 70 ILCS 2605/11.3, is cjar^ establishing procedur^ as well as state and f^er^^§^<6^it^]] the;utilization of facilities owned, women-owned and small business enter^ consistent with cbhstW^

*Whereas^the District is committed to equal opportunity for minority^ small bu^in^,^^^.*  
11^ ^4 performance of District^cts/ ' <

Where^; fB^Supreme Court of the United States in City of Richmond (488 U.S. 469 (1989)), has enunciated certain standards that are neQe^'^;^,pp^^]]^%.: contracting affirmative-action programs in compliance with cbritUtioh^iul^is} '- -

*Whereas^t^d.^i^trinit: is; committed to implementing its affirmative-conformance with the United States Supreme Court's decision in CrosonB^t&.^p^'-:-.]*

Whereas, in furtherance of this commitment, the Board of Commissioners in 1990 to conduct an investigation into the alleged discrimination in the award of and participation in District construction contracts as well as the construction industry in Metropolitan Chicago, the extent to which such discrimination or the effects thereof has denied and continues to deny minority and women's business enterprises equal opportunity to participate in District contracts and to recommend the appropriate affirmative action steps to be taken to eliminate any such discrimination and its continuing effects.

Whereas, on June 21, 2001, the District adopted its Revised Appendix D, Notice of Requirements for Affirmative Action Program to Ensure Minority, Small and Women's Business Participation ("Appendix D"); and

Whereas, in 2006 the Board of Commissioners undertook a review of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority and women-owned businesses in the Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and

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any necessary revisions thereto; Whereas, the Board of Commissioners undertook a review in 2012 of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority- and women-owned businesses in the Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and any necessary revisions thereto;



Disadvantaged: Business Enterprises ("DBEs") in its geographic and procurement markets, to ensure, that its DBE program was narrowly tailored as required by Constitutional standard, which found 19.56% DBE availability in construction, 19.36% DBE availability in construction-related professional services, and that DBE utilization had steadily increased; from 2.40% in 2004 to 24.72% in 2010.8. The Board of Commissioners of Cook County commissioned a new report, entitled "The Status of Minority and Women-Owned Business Enterprises Relevant to Construction Activity In and Around Cook County, Illinois" (Cook County 2010 Study), which found that MBEs and WBEs were not utilized in all aspects' in proportion to their availability.

9. In 2010 the U.S. Department of Justice produced a report to Congress, entitled
9. "Compelling Interest for Minority- and Women-Owned Federal Contractors"
9. to the May 23, 1996 -Review of Barriers to Minority and Women-Owned Construction
9. updated: the report is for the U.S. Department of Transportation's. The report
9. concluded that barriers continue, to, impede the ability of MBEs and WBEs to
9. compete' on a fair and equal, footing in government contracting, -
9. including in the construction
10. In 2012, the report on barriers to minority and women-owned
10. opportunities in the construction industry for District of Columbia
10. barriers; the report found that barriers continue to exist.
11. In 2012, the report on barriers to minority and women-owned
11. investigate barriers to equal opportunities in the District's geographic and
11. and make recommendations to reduce such barriers, which found that
11. disparities in the District's market areas.

12. In 2015, the trial court in *Midwest Fence, Corp. v. U.S. Department of Transportation et al*, 2015 WL 139676 (N.D. Ill March 24, 2015) (Held that discrimination continues to impede full and fair opportunities for disadvantaged business enterprise in the Illinois construction industry).

13. The District has determined that it has a continuing compelling interest in preventing public funds in construction contracts from perpetuating the effects of past discrimination and current discrimination against minority- and women-owned firms in its market.

14. The Affirmative Action Program adopted by the District is hereby modified to further continue to ameliorate the effects of racial and gender discrimination in the construction market.

15. The remedies adopted herein by the District will not overly burden non-MBE and non-WBE firms in the award of District Contracts.

16. The Commissioners shall periodically review minority-owned and women-owned participation in contracts awarded by the District to ensure that the District continues to have a

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compelling interest in remedying discrimination against minority and women-owned firms in the award of District contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.

Now, therefore, the District Board of Commissioners hereby adopts this Revised Appendix D;

### Section 3. Purpose and Intent

The purpose and intent of this Ordinance is to mitigate the present effects of discrimination on the basis of race, ethnicity or sex in opportunities to participate on the District's prime contracts and associated subcontracts and to achieve equitable utilization- of minority-owned, women-owned and small business enterprises in District construction contracts..

### Section 4, Coverage

The following provisions, to be known as "Appendix D" together with relevant forms, shall apply and be appended to every construction contract awarded by the District where the estimated total expenditure is in excess of \$100,000.00, except contracts let in the event of an emergency pursuant to 70 ILCS 2605/11.5.

### Sections. Definitions:

The meaning of these terms in this Ordinance are as follows:

- a) "Administrator" means the District's Affirmative Action Program Administrator..
- b) "Affiliate" of a person or entity means a person or entity that directly or indirectly through One or inofei4ter^e^jane>i controls or is controlled by, or is under MirMon .cpn with, the person or entity;  
In:^^deterriinmg Affiliationj the District shall consider fill apprdpria'te factors, including common ownership, common management, and contractual relatorishlps.
- c) "Annual Participation Goals" mean the targeted levels established by the'District for the annual aggregate participation of MBEs and WBEs in District construction contracts
- d) "Bidder" means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not'for profit corporation, a limited liability company or any Other entity which has submitted a bid on a District contract.
- e) "Books and Records" include, but are not limited to, payroll records, bank statements, bank reconciliations, accounts payable documents, account receivable documents, ledgers, all financial software, and all employer business tax returns.
- f) "Contract Specific Goals" means the Goals established for a particular project or contract based upon the availability of MBEs or WBEs in the scope(s) of work of the Project.
- g) "Construction contract" means any District contract or amendment thereto, providing for a total expenditure in excess of One Hundred Thousand Dollars (\$100,000.00) for. the construction, demolition, replacement, major repair or renovation and maintenance of real property and improvement thereon or sludge hauling and any other related contract which the District deems appropriate to be subject to Appendix D consistent with the Ordinance.

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(h) "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities.

(i) "Contract Goals" means the numerical percentage goals for MBE, WBE or SBE participation to be applied to an eligible District construction contract subject to Appendix D for

(k) "Economically Disadvantaged" means an individual with a Personal Net Worth less than \$2,000,GO0ip6, indexed annually for the Chicago Metro Area Consumer Price Indent, published by the U.S; Departrrrient of Labor, Bureau of Labor Standards, beginning January 20Q&.

(m) ^x^0^.jf^m demonstrated skills, knowledge or ability to. pQ^rni'm-i^B^.;  
of endeavor in ^vy^c^^^)^b^tion is sought by the firm, as defined by norma}'. iQdtiS^..p//^^^«.-  
including'Hc^ - |.~-

by the Board of Qpirnims^^ the: Statepfl^rJ^^  
cpnduct hearings' as provided in this Ordmah0^^ contactor's cOrhplW^

(q) "Job Order Contract" or "JOC" means a firm, fixed price, indefinite quantity contract designed to complete a large number of construction projects quickly.

(s) "Minority-owned business enterprise" or "MBE" means a Local Small business entity, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity, which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held

corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more members of one or more minority groups, and whose management, policies, major decisions and daily business operations are controlled by one or more Minority individuals.

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i) African-American - A person having origins in any of the Black racial groups of Africa and is regarded as such by the African American Community of which the person claims to be a part.

(iii) Asian-American - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands or the Northern Marianas, and is regarded as such by the Asian American community of which the person claims to be a part.

ii) Hispanic American - A person having origins from Mexico, Puerto Rico, Cuba and South or Central America and is regarded as such by the Hispanic community of which the person claims to be a part, regardless of race;

(v)" ^atiye^^eri^uT--. A person-having origins in any of the original peppjespf

. North America arid \vhp; is r<sup>^</sup>B/ai;j<sup>\*</sup>f<sup>^</sup>prias; a Native 'A<sup>^^</sup>gaoilbyv<sup>^</sup>|&{

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state or federal rieg^atip^^

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society, withPut^ resulting; ih decreased opportunities. tp .p^pe^ih!"

*the^istriet?s'mar^!^* *with-the District:* | ^

(u)'''Personalthe net value of the assets of an individual ^

liabilities are deducted; Aii:'-itfo^vidu)if?s .pe'rsonal:-nei: worth-,does not include the-in'^dii^.s.-.

ownership interest, in an applicable other certified MBE or WBE, provided that the other firm is:

certified by a goyerru^enfaiyagen^ the District's eligibility criteria or the Indivldilalls.

equity in his or her primary place of residence. As to assets held jointly with his or her spouse or recognized civil partner, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

(v) "Prime Contractor" means a Contractor that is awarded a District contract and is at risk for the completion of an entire District project, including purchasing all materials, hiring and paying subcontractors, and coordinating all the work.

(w) "Small Business Enterprise" or "SBE" means a small business as defined by the U.S. Small Business Administration (SBA), pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the firm seeks to perform on District contracts, except that the size standard for specialty trade construction firms shall be 150 percent of the SB A size standard. A firm is not an eligible SBE in any calendar fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 CFR Part 121.

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(x) "Socially Disadvantaged" means a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

(y) "Subcontractor" means a party that enters into a subcontract agreement with a District Prime Contractor to perform work or provide materials on a District project.

(z) "Tier" refers to the relationship of a subcontractor to the prime contractor. A subcontractor having a contract with the prime contractor, including a material supplier to the prime contractor, is considered a "first-tier subcontractor," while a subcontractor's subcontractor is a "second-tier subcontractor" and the subcontractor's material supplier is a "third-tier subcontractor." A subcontractor is subject to the same duties, obligations and sanctions as the contractor under this Ordinance.

(aa) "Utilization plan" means the plan, in the form specified by the District, to be submitted by a Bidder to the District, showing the percentage of work to be performed by WBEs and SBEs on the contract; the scopes of the work and the dollar values of the work to be performed.

(bb) "Vendor list" means the District's list of firms that are certified as Minority Business Enterprises or women-owned by the City of Chicago, the County of Cook, the State of Illinois, or the District. The list shall include the names of the firms, their addresses, and their telephone numbers. The list shall be updated annually.

(cc) "Woman-owned business enterprise" or "WBE" means a Local Business Enterprise or a woman-owned business enterprise which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. Determination of whether a business is at least fifty-one percent (51%) owned by a woman or women shall be made without regard to community property laws.

#### Section 6. Non-Discrimination and Affirmative Action Clause

As a precondition to selection, a Contractor must include in its bid proposal for a covered contract the following commitments:

During the performance of this contract, the Contractor agrees:

a) It shall not discriminate on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation, veteran or military discharge status, association with anyone with these characteristics, or any other legally protected characteristic in the solicitation for or purchase of goods in the performance of this contract.

b) It shall actively solicit bids for the purchase or subcontracting of goods or services from qualified MBEs, WBEs and SBEs.

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c) It shall undertake Good Faith Efforts in accordance with the criteria established in this Ordinance, to ensure that qualified MBEs, WBE, and SBEs are utilized in the performance of this contract and share in the total dollar value of the contract in accordance with each of the applicable utilization goals established by the District for the participation of qualified MBEs, WBEs and SBEs.

d) It shall require its subcontractors to make similar good faith efforts to utilize qualified MBEs, WBEs and SBEs.

e) It shall maintain records and furnish the District all information and reports required by the District for monitoring its compliance with this Ordinance.



f) It shall designate a person to act as an Affirmative Action Coordinator to facilitate the review of all concerns related to the participation MBEs, WBEs and SBEs.

#### Section 7. Race- and Gender- Neutral Measures to Ensure Equal Opportunities for All Contractors and Subcontractors

The District shall develop and use measures to facilitate the participation of all firms in District construction activities. These measures, shall include\* but are not limited to:

- (a) Unbundling contracts to facilitate participation of MBEs, WBEs and SBEs as Prime-Contractors.
- (b) Adjusting schedules, to facilitate participation of MBEs, WBEs and SBEs.
- (c) Providing training and technical assistance to subcontractors.
- (d) Assisting MBEs, WBEs and SBEs with training seminars on the technical aspects of preparing a bid.
- (e) Providing assistance to businesses in overcoming barriers such as discrimination.
- (e) Obtaining bonding assistance for business development such as access to capital.
- (e) Estimation, safety, quality control.
- (f) Prohibiting Prime Contractors from requiring bonding for subcontractors when appropriate.
- (g) Holding pre-bid conferences, where appropriate, to explain the contract and to encourage Bidders to use all available firms as subcontractors.
- (h) Adopting prompt payment procedures, including, requiring by contract that Prime Contractors promptly pay subcontractors and investigating complaints or charges of excessive delay in payments.
- (i) Developing Linked Deposit and other financing and bonding assistance programs to assist small firms.
- (j) Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the District.
- (k) Collecting information from Prime Contractors on District construction contracts detailing the bids received from all subcontractors for District on construction contracts and the expenditures to subcontractors utilized by Prime Contractors on District construction contracts.
- (l) Limiting the self-performance of prime contractors, where appropriate.
- (m) To the extent practicable, developing future policies to award contracts to SBEs.
- (n) Maintaining information on all firms bidding on District prime contracts and subcontracts.

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(o) At the discretion of the Board of Commissioners, awarding a representative sample of District construction contracts without goals, to determine MBE, WBE and SBE utilization in the absence of goals.

(p) Referring complaints of discrimination against MBEs, WBEs or SBEs to the appropriate authority for investigation and resolution.

#### Section 8. Certification Eligibility

a) Only businesses that meet the criteria for certification as a MBE, WBE or SBE may be eligible for credit towards meeting Utilization Contract Goals. The applicant has the burden of production and persuasion by a preponderance of the evidence at all stages of the certification process.

b) Only a firm owned by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

(i) The firm's ownership by- a Socially and Economically Disadvantaged person(s). must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership

documents; The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership /interest.

(h) The contribution by the Socially and Economically Disadvantaged owner(s) to acquire the firm must be real and substantial. If the contribution is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field to the firm's operations, indispensable to the firm's potential success, and of the type that the firm performs and documents. The firm must have a capital structure that is relied upon.

- (p.) Only a firm is managed and controlled by a Socially and Economically Disadvantaged owner(s).
- i) A firm must be free to any formal or informal restrictions that limit the
  - i) customary discretion of the Socially and Economically Disadvantaged owner(s), there can be no
  - i) restrictions through corporate charter provisions, by-law provisions, contracts or any other
  - i) formal or informal devices that prevent the Socially and Economically Disadvantaged owner
- (s) >
- i) without the cooperation or vote of any non-Socially and Economically Disadvantaged person;
  - i) from making any business decision of the firm, including the making of obligations or the
  - i) dispersing of funds.
  - ii) The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on management, policy, operations and work.
  - iii) The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially and Economically Disadvantaged owner (s) must actually exercise control over the firm's operations, work, management and policy.
  - iv) The Socially and Economically Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the firm's operations and work. The Socially and Economically Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by

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other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.

v) If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially and Economically Disadvantaged owner(s) must possess the required license or credential. If state law, District ordinance or other law regulations or statute does not require that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner(s) actually Controls the firm.

vi) A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day to day activities.

- d) Only an independent firm may be certified as a MBE, WBE or SBE. An independent
- d) firm is one whose viability does not depend on its relationship with another firm. Recognition of
- d) an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to
- d) demonstrate that a firm is whether an applicant is

- d) an independent business, the District; will
  - i) Evaluate relationships with non-certified firms in such areas as personnel, facilities, equipment, financial
  - ii) Consider ^ or recent" employer/employee relationships history
  - ii) the Socially and Economically Disadvantaged owner(s) for MBEs and WBEs or the majority owner for SBEs for MBE part. ^E
  - ii) certification or any owners of the applicant for SBE certification and non-certified firms or
  - ii) persons associated with non-^
  - iii) Examine the firm's relationships, with non-certified firms to determine whether a pattern of exclusive or primary dealings with non-certified firms compromises the applicant's independence.
  - iv) Consider the consistency of relationships between the applicant and non-certified firms with normal industry practice.
- e) An applicant Shall be certified only for specific types of work in which the Socially and Economically Disadvantaged owner(s) for MBEs and WBEs or the majority owner for SBEs has the ability and Expertise to manage and control the firm's operations and work.
- f) The District shall certify the eligibility of Joint Ventures involving MBEs, WBEs or SBEs and non-certified firms.
- g) The certification status of all MBEs, WBEs and SBEs shall be reviewed periodically by the Administrator. Failure of the firm to seek recertification by filing the necessary documentation with the Administrator as provided by rule may result in decertification.
- h) It is the responsibility of the certified firm to notify the Administrator of any change in its circumstances affecting its continued eligibility. Failure to do so may result in the firm's decertification.
- (i) The Administrator shall decertify a firm that does not continuously meet the eligibility criteria.
- (j) Decertification by another agency shall create a prima facie case for decertification by the District. The challenged firm shall have the burden of proving by a preponderance of the evidence that its District certification should be maintained.
- (k) A firm that has been denied certification or recertification or has been decertified may protest the denial or decertification by filing a written appeal with the Executive Director within

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10 calendar days of receipt of the denial of District certification, recertification or decertification. The appeal should set forth in detail the facts upon which it is based, and attach all relevant documentations. The Executive Director shall render a decision within 15 calendar days of receipt of a timely appeal. The Executive Director's decision shall be final.

(1) A firm found to be ineligible may not apply for certification for two years after the effective date of the final decision.

## Section 9. Schedule of Goals for Minority-Owned, Women-Owned and Small Business Enterprise Utilization

In fulfillment of its policy to provide MBEs, WBEs, and SBEs full and equitable opportunities to participate in the District's construction prime contracts and subcontracts, the District shall establish annually goals for MBE, WBE and SBE participation, based on the availability of MBEs and WBEs in the District's geographic and procurement market.

## Section 10. Contract Goals.

- a) *The Director, in consultation with the Administrator and the User Department, shall*
- a) *establish Contract Goals; for CQs^ availability of at least one MBE and one WBE;*
- a) *MBEs and three WBEs registered: on the District's vendor list to perform the work*
- a) *subcontracting functions. The District's utilization of MBEs and WBEs shall be at least*

- b) Where a portion of the total construction contract cost is for the purchase of equipment, the Direct Only that portion of the cost shall be counted towards the goal.
- b) construction work and related supplies and/or modify the limitations on the credit for MBE or WBE suppliers herein: " : "
- c) The Contract Goal(s) shall be designated in the contract documents.

#### Section 11. Counting MBE, WBE, and SBE Participation towards Contract Goals

a) A Bidder may achieve utilization of Contract Goals by its status- as a MBE, WBE or SBE or by entering into a Joint Venture with one or more MBEs, WBEs and SBEs or by first-tier subcontracting a portion of the work to one or more MBEs, WBEs and SBEs or by direct purchase of materials or services from one or more MBEs, WBEs and SBEs or by any combination of the above.

b) If a firm is certified as both a MBE and a WBE, the Bidder may count the firm's participation either toward the achievement of its MBE or WBE goal, but not both.

c) A Bidder may count toward the achievement of its SBE goal the utilization of any MBE or WBE that also satisfies the definition of a SBE.

d) A Bidder may count the entire amount of that portion of a contract that is performed by MBEs, WBEs or SBEs own forces, including the cost of supplies and materials obtained and installed by the MBE, WBE or SBE for the work of the contract, and supplies purchased or equipment leased by the MBE, WBE or SBE used to directly perform the work of the contract (except supplies and equipment the MBE, WBE or SBE purchases or leases from the Prime Contractor or the Prime Contractor's Affiliate).

e) Where a Bidder or first-tier subcontractor engages in a Joint Venture to meet the Contract Goal, the Administrator shall review the profits and losses, initial capital investment,

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actual participation of the Joint Venture in the performance of the contract with its own forces and for which it is separately at risk, and other pertinent factors of the joint venture, which must be fully disclosed and documented in the Utilization Plan in the same manner as for other types of participation, to determine the degree of MBE, WBE or SBE participation that will be credited towards the Contract Goal. The Joint Venture's Utilization Plan must evidence how it will meet the goal or document the Bidder's Good Faith Efforts to do so. The Administrator has the authority to review all records pertaining to Joint Venture agreements before and after the award of a contract in order to assess compliance with this Ordinance. The MBE, WBE or SBE Joint Venture partner must have a history of proven expertise in performance of a specific area of work and will not be approved, for performing only general management of the Joint Venture. The specific work activities for which the MBE, WBE or SBE Joint Venture partner will be responsible and the assigned individuals must be clearly designated in the Joint Venture Agreement, the Joint Venture must submit to the Administrator quarterly work plans, including scheduling dates of the tasks. The Administrator must approve the quarterly plans for the MBE, WBE or SBE Joint Venture partner's participation to be credited towards the Contract Goals.

(f) Only the participation of MBEs, WBEs or SBEs that will perform as first-tier subcontractors will be counted towards the Utilization Contract Goals.

(g) Only the expenditure of funds shall be counted toward

- i) A firm is considered useful function when it is
- i) responsible for work of a contract and carries out its

i) responsibility by a firm, and supervising the work in person, must pay all costs of equipment. The firm must own and/or lease equipment of its own for negotiating price, determining quality and quantity and paying for and ordering materials used. The firm may use its own employees with the firm. No payments for use of equipment or materials by the firm can be made through deductions by the Prime Contractor. NVF members who own related businesses are allowed to lease, loan or provide equipment, employees or materials to the firm.

ii) A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of MBE, WBE or SBE participation. The Prime Contractor is responsible for ensuring that the firm is performing a commercially useful function.

iii) The District will evaluate the amount of work subcontracted, industry practices, whether the amount the MBE, WBE or SBE is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

iv) If a firm subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a firm is presumed not to be performing a Commercially Useful Function, the firm may present evidence to rebut this presumption.

(h) Credit towards the Contract Goals will be allowed only for those direct services performed or materials supplied by MBEs, WBEs or SBEs or first-tier subcontractor MBEs, WBEs or SBEs. MBEs, WBEs or SBEs must perform no less than eighty-five percent (85%) of

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their work with their own forces, through the use of its own management and supervision, employees and equipment. If industry standards and practices differ, the firm must furnish supporting documentation for consideration by the District.

(i) Purchase of materials and supplies must be pre-approved if their purchase is related to goal attainment. Bidder may count payments to MBE, WBE or SBE regular dealers or manufacturers who offer only furnish and deliver contracts for materials and supplies for no more than twenty-five percent (25%) of each MBE, WBE or SBE goal, unless approved by the Administrator. If the bidder exceeds the supplier exception amount allowable as stated in the bid documents, the bid will be viewed as non-responsive.

(j) A dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required, for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers. A manufacturer is a firm that maintains a factory or establishment that produces on the premises the materials for supply by the firm. Bidder

(k) If a firm ceases to be a certified disadvantaged business enterprise on a contract, the portion of

work performed; under a contract by that firm after it has ceased to be certified shall not be counted.

(j) In determining achievement of Utilization Contract Goals, the participation of MBEs, WBE or SBE shall not be counted against the achievement of the Utilization Contract Goals.

## Section 12. Utilization Plan Submission

a) Compliance with the Utilization Contract Goals as submitted as provided in the solicitation, failure to do so will render the bid non-responsive. The Director shall review each bid submission to determine if it meets the requirements herein.

b) A Bidder must either meet the Utilization Contract Goals or establish its Good Faith Efforts to do so as described in Appendix D and the solicitation.

c) Each Bidder shall submit with its bid a completed and signed Utilization Plan that lists the names, addresses, telephone numbers, email addresses and a description of the work with contract item number and contact person of the businesses intended to be used as subcontractors, subconsultants and suppliers, including those firms proposed to meet the Contract Goal(s); the type of work or service each business will perform; and the dollar amount to be allocated to the certified firm(s). Each Bidder's Utilization Plan shall commit to MBE, WBE or SBE participation equal to or greater than each of the Contract Goals set forth in the solicitation, unless the Bidder requests a partial or total waiver of the requirement that it file a Utilization Plan or achieve a particular goal by submitting with the bid a signed Waiver Request in the form specified in the solicitation.

d) Each Bidder must submit with its bid a signed MBE, WBE or SBE Subcontractor's Letter of Intent for each firm in the form specified in the solicitation, with either a copy of each MBE, WBE or SBE's current Letter of Certification from a state or local government or agency

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or documentation demonstrating that the firm is a MBE, WBE or SBE within the meaning of this Appendix D. In the event of a conflict between the amounts stated on the Utilization Plan and the MBE, WBE or SBE Subcontractor's Letter of Intent, the terms stated on the Utilization Plan shall control. An original or facsimile copy of the MBE, WBE or SBE Subcontractor's Letter of Intent will be acceptable.

(e) Where a Bidder had failed to meet the Contract Goal(s), it must file a Waiver Request documenting its Good Faith Efforts to meet the Goal(s) as provided in the format described in the solicitation, the Administrator shall require the contractor to file a Contractor Information Form and provide additional documentation of its good faith efforts in attempting to fulfill such goals.

(i) Such Good Faith Efforts, as defined herein, shall include, but are not limited to, the following:

i) Attend any pre-bid conference conducted by the District to acquaint contractors with MBEs, WBEs and SBEs available to provide relevant goods and services and to inform MBEs, WBEs and SBEs of subcontract opportunities on the contract;

ii) Review lists, of available MBEs, WBEs and SBEs maintained by the District and other state and local governments and agencies prior to the bid opening to identify qualified MBEs, WBEs and SBEs for solicitation for bids;

iii) Advertise, not less than 15 calendar days before the bid opening date, in one or more daily newspapers and/or trade publication for proposals or bids by MBEs, WBEs and SBEs for subcontracts or the supply of goods and services on the contract;

(iv) Provide timely written solicitations, of available MBEs, and WBEs and

SBEs identified on the list of firms that provide relevant services for subcontracts

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supply of goods and services\*

v) Provide MBEs, WBES and SBEs with convenient and timely opportunities to review and obtain, relevant plans, specifications, or terms, and conditions; of the contract to enable such MBEs, WBEs and SBEs to prepare an informed response to a contractor solicitation;

vi) Divide total contract requirements into small tasks or quantities and adjust performance bond and insurance requirements or otherwise assist MBEs, WBEs and SBEs in obtaining the required bonding, insurance or financing, where economically feasible, to encourage participation of MBEs, WBEs and SBEs;

vii) Follow up initial solicitation of MBEs, WBEs and SBEs by contacting them to determine if the enterprises are interested in making bids or proposals;

viii) Negotiate in good faith with MBEs, WBEs and SBEs prior to the bid opening and do not reject as unsatisfactory any bids or proposals submitted by M/WBEs without justifiable reason, including the lack of bonding capacity or the ability to obtain insurance requirements such as Completed Builders Risk (All Risk) Insurance, Comprehensive General Liability Insurance, Contractor Contractual Liability Insurance and Public Liability Insurance;

ix) Establish delivery schedules, where the requirements of the work permit, which will encourage participation by MBEs, WBEs and SBEs;

x) Establish joint ventures with MBEs, WBEs and SBEs;

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(xi) Use the services and assistance of the District, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce and appropriate community and minority and women's business organizations;

ii) Failure of a Bidder to provide requested information to the Administrator or to cooperate with the Administrator's investigation, may be grounds for the rejection of a bid and/or a Waiver request.

iii) Upon completion of the investigation, the Administrator shall inform the Director of\* his or her findings.

iv) The Director, after consultation with the Administrator, shall determine whether to grant the waiver request based on the Bidder's Good Faith Efforts at the time of bid submission.

(v) Where the Director determines that a Bidder has not made Good Faith Efforts, the Director shall declare the bid submission non-responsive and will reject the bid.

(d) A contractor's submission of a Utilization Plan that commits to a MBE or WBE participation equal to or greater than the applicable utilization-goals shall not provide a basis for -a higher bid, an increase in contract price or a later change of d^

, (e) The requirement to submit a^ WBE or SBE Subcontractor's Letters of Intent applies when the individual project is awarded under Job Order Contracts awarded by the District.

i) A Prime Contractor submitting a Job Order Contract shall submit with each^prk.

i) order issued under such, a Contract its Utilization Plan that lists the name, address, telephone,

Work-' i) number, email address and contact person for each. MBE\* WBE or SBE to be used on the

i) order\*-as well as a description ^ dollar amount to be allocated

i) such MBE, WBE or SBE. the Prime Contractor shall submit with each work order a MBE,

i) WBE or SBE Subcontractor's Letter of Intent from each certified firm.

ii) A Prime Contractor awarded a Job Order Contract shall be subject to the compliance monitoring provisions herein. The Prime Contractor must submit to the Administrator monthly documentation, as specified by the Administrator, demonstrating that the Contractor has attained the Contract Goals for the completed portion of the Job Order Contract or that it has been unable to do so despite its good faith efforts. Good Faith Efforts must be documented as provided in this Ordinance.

### Section 13. Compliance Review

(a) The Director shall declare the bid submission non-responsive if a Bidder:

i) Failed to submit with its bid a completed and signed Utilization Plan;

ii) Failed to commit in its Utilization Plan to MBE, WBE and SBE participation equal to or greater than each of the Utilization Contract Goals unless the Bidder submitted with its bid a request for a total or partial waiver of the Goal(s).

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iii) Failed to identify in its Utilization Plan the MBE, WBE or SBE by name, scope of work, contract item number, and dollar value of work or percentage of participation equal to or greater than each of the Contract Goal(s).

iv) Failed to submit with its bid the MBE, WBE and SBE Subcontractor's Letter of Intent from each MBE, WBE and SBE listed on its Utilization Plan.

b) Where, after consultation with the Administrator, the Director determines that the Utilization Plan submitted by a Bidder is false or fraudulent, the bid shall be rejected or, if the determination is made after the bid award, the contract may be forfeited in accordance with the provision of Article 28 of the General Conditions.

c) If a Mentor-Protégé relationship is proposed to meet the Contract Goal, the Mentor-Protégé Development Plan must be submitted to the Administrator for approval prior to contract award. Mentor-Protégé relationship" describes an association between large business prime contractor firms, and socially disadvantaged firm's designed to motivate, encourage, and to provide mutually beneficial developmental assistance to those socially disadvantaged firms.

d) Prior to the award of any contract, the Administrator shall review the Utilization plan, MBE, WBE and SBE Subcontractor's Letter(s) of Intent and Letter(s) of Certification and Contractor Information and Waiver Request; Forms as specified in the solicitation, submitted by the apparent low bidder on a contract and conduct any other investigation the Administrator deems appropriate to determine compliance,

e) Within 30 calendar days after demand, the Prime Contractor shall furnish executed



- e) copies of all .jMBE, WBE and .SjBE iubpbntxa^ Subsequently; the demand; ■
- f) The Prime Contractor must submit a Work Plan for use of its subcontractors before fifty percent (50%) of the work is completed.
- g) If requested by the Administrator, the Prime Contractor must submit a MBE, WBE and SBE Work Plan projecting the work tasks associated with certified firms' commitments prior to the award of the contract. The Work Plan must provide a description of the work to be subcontracted to other MBEs, WBEs and SBEs and non-certified firms and the dollar amount and the name of the all tiers of subcontractors. The Work Plan becomes part of the Prime Contractor's contractual commitment and the contract record, and may not be changed without prior approval of the Administrator.

#### Section 14. Contract Performance Compliance

- a) After the award of a contract, the Administrator shall review the Prime Contractor's compliance with its MBE, WBE and SBE commitments during the performance of the contract.
- b) The Prime Contractor shall be required to submit the Affirmative Action Monthly MBE/WBE/SBE Status Report providing the information and in the format as specified by the District with every payment request. The Contractor's failure to do so may result in a delay of the progress payment.

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- c) Evidence of MBE, WBE and SBE subcontractor participation and payments must be submitted as required by the District to confirm subcontractors' participation and payment.
- d) District contract compliance officers and auditors, or their designees, shall have access to the contractor's and subcontractor's books and records, including certified payroll records, bank statements, employer business tax returns and all records including all computer records and books of account to determine the contractor and MBE, WBE and SBE subcontractor compliance with the goal commitment. Audits may be conducted at any time and without notice in the total discretion of the District. A Prime Contractor must provide the Administrator any additional compliance documentation within 14 calendar days of such request. Audits may be conducted without notice at any time at the discretion of the District.
- e) If District personnel observe that any purported MBE, WBE and SBE subcontractor other than those listed on the Utilization Plan are performing work or providing materials and/or equipment for those MBE and WBE subcontractors listed: on the Utilization Plan, the Prime Contractor will be notified in writing of an apparent violation is taking place and progress, payments may be withheld. The contractor will have the opportunity to meet with the Affirmative Action Administrator prior to a finding of noncompliance;
- f) Where a partial or total waiver of the Contract Goal(s) has been granted, the Prime Contractor must continue to fulfill its commitment to the District.
- f) meet the Goal(s), and the Administrator shall provide technical assistance with respect to such efforts. The Administrator shall continue to provide documentation of its continuing Good Faith Efforts in attempting to fulfill its commitments.

- g) the Prime Contractor cannot make changes, to the approved Utilization Plan or
- g) substitutions Of the MBE(s), WBi(s) Or SBE(s) listed in the, 'Utj^ throughout the life
- g) of the contract without, the prior, written approval Of the Administrator. this includes, but is not
- g) limited to, instances in which the Prime Contractor; seeks to ^ originally designated-
- g) for a MBE, WBE or SBE subcontractor with its own forces or those of an affiliate, a ndm
- g) certified firm or another MBE ^ written approval of the
- g) Administrator for in the event of a specified b ^ breach of the contract, , and
- g) subject the Prime Contractor to any and all available sanctions, the participation of certified
- g) firms that did not receive prior, written approval by the Administrator will not be counted
- g) towards the Contract Goal(s).

(i) The Prime Contractor must demonstrate good cause to terminate or reduce the scope of work of the MBE, WBE or SBE to the satisfaction of the Administrator. Good cause is limited to the following circumstances:

- 1) The listed MBE, WBE, or SBE subcontractor fails or refuses to execute a written contract.
- 2) The listed MBE, WBE or SBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
- 3) The listed MBE, WBE or SBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state or local law.
- 4) The Administrator has determined that the listed MBE, WBE or SBE subcontractor is not a responsible contractor.

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- 5) The listed MBE, WBE or SBE subcontractor voluntarily withdraws from the project and provides the Administrator written notice of its withdrawal.
- 6) The listed MBE, WBE or SBE subcontractor is ineligible to receive credit for the type of work required.
- 7) The MBE, WBE or SBE owner dies or becomes disabled with the result that the listed MBE, WBE or SBE subcontractor is unable to complete its work on the contract.
- (8) Other good cause as determined in the Administrator's sole discretion.

ii) Good cause does not include where the Contractor seeks to terminate a MBE, WBE or SBE it relied upon to obtain the contract so that the Contractor can self-perform the work or substitute another MBE, WBE or SBE or non-certified subcontractor to perform the work for which the MBE, WBE or SBE was engaged 'or listed on the Utilization Plan.

iii) The Prime Contractor must give the MBE, WBE or SBE notice in writing, with a copy to the Administrator, of its intent to request to terminate and/or substitute, and the detailed reasons for the request.

- iv) If the Prime Contractor proposes to terminate or- substitute a: MBE, WBE or
- iv) SBE subcontractor for any reason ^ the Good Faith Efforts as defined
- iv) herein to find a substitute
- to meet its 'MBE, WBE or SBE' obligation

at finding another MBE, WBE or SBE to perform or provide at least the same amount of work, material or service under the; contract as the original MBE, WBE or SBE to the extent necessary to meet

v) The Prime Contractor, must have a MBE, WBE or SBE Subcontractor's Letter of Intent for each proposed new MBE, WBE or SBE Subcontractor

vi) The Administrator will approve or disapprove the substitution based on the Prime Contractor's documented compliance with these provisions.

(h) In the event a Prime Contractor fails to achieve the level of MBE, WBE or SBE participation described in its Utilization Plan as the result of the District's deletion of the work to be performed by a MBE, WBE or SBE, the Prime Contractor shall notify the Administrator in writing and may request an amendment of its Utilization Plan. A letter of release signed by the subcontractor must be included with the request.

(i) In the event a Prime Contractor, in the performance of its contract, determines that the conditions of the work warrant a reduction in the scope of work to be performed by a MBE, WBE or SBE the Prime Contractor must utilize Good Faith Efforts to fulfill its MBE, WBE or SBE contractual commitment. The Prime Contractor must notify the Administrator in writing within 14 calendar days of the determination to request an amendment of its Utilization Plan. The Prime Contractor must give the MBE, WBE or SBE notice, in writing, with a copy to the Administrator, of its intent to request to reduce the scope of work, and the detailed reasons for the request. The Administrator will approve or disapprove the reduction based on the Prime Contractor's documented compliance with these provisions.

(j) Where contract change orders are made individually or in the aggregate that increase the total value of the contract by more than ten percent (10%) of the original contract value, the

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Prime Contractor shall increase the utilization of all MBEs, WBEs or SBEs, where feasible, so that the total value of the percentage of work performed by MBEs, WBEs or SBEs as to increased contract value bears the same relationship to the total value of the contract (as modified by change orders) as the percentage of MBEs, WBEs or SBEs utilization committed to in the contractor's original Utilization Plan.

#### Section 15. Sanctions for Non-Compliance

(a) Where the Administrator believes that the Prime Contractor or subcontractor has committed fraud or misrepresentation against the District or has failed to comply with this Ordinance or its contract, or provided false or fraudulent documentation, the Administrator shall notify the Prime Contractor and/or subcontractor in writing of such determination of noncompliance and withhold up to one hundred percent (100%) of the current progress or final payment due the Prime Contractor for up to 90 days. The amount to be withheld shall be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made Good Faith Efforts to achieve such commitments. The Prime Contractor and/or subcontractor shall have the right to meet with the Administrator within 10 calendar days of receipt of the notice; After conference and conciliation; the Administrator will determine whether the Prime Contractor and/or subcontractor is in compliance.

(b) If the Administrator determines the Prime Contractor and/or subcontractor is not in compliance and the violation cannot be resolved by conference and conciliation the Administrator shall refer the matter to the Executive Director and the Executive Director may

return me; referral to me Adni^ Prime' Contractor and/or  
subcontractor to show cause within a date certain why further: said parties should  
i) The Prime Contractor and/or subcontractor shall have 15 calendar days after receipt  
i) of the show cause notice within which to file a response in  
writing with the Administrator. A  
i) hearing before a duly appointed Hearing Officer shall be convened to provide the contractor  
i) and/or subcontractor an opportunity to be heard with respect to the noncompliance. Within 30  
i) calendar days after receipt of the referral, the Hearing Officer shall schedule a hearing:  
i) to be held within 30 calendar days of receipt of the referral for hearing at which the Districts  
the  
i) contractor and/or subcontractor may present evidence of the purported violation and/or the  
i) absence thereof. The District will carry the burden of proof by a preponderance of the  
evidence.  
i) The Prime Contractor and/or subcontractor may present additional evidence and witnesses to  
i) show cause why sanctions should not be imposed. An official record will be kept with the  
Clerk  
i) of the District. All filings by the District or the respondents should be made with the Clerk of  
the  
i) District, with courtesy copies going to the parties and the Hearing Officer.  
ii) The Hearing Officer shall conduct such show cause hearings involving the Ordinance and  
shall render findings of fact, conclusions of law and recommendations regarding disposition of the hearings.  
Procedures and rules governing the show cause hearings will be adopted by the Board of Commissioners. The  
Hearing Officer will not become co-counsel with any attorneys appearing before him/her at any time during the  
hearing.  
iii) All Show Cause Hearings must be conducted on the record and all testimony must be under  
oath and transcribed verbatim by a court reporter. All parties shall be given the opportunity to present and  
respond to evidence. The Hearing Officer shall conduct a fair hearing and maintain order and shall abide by the  
Judicial Canons of Ethics enacted by the Illinois Supreme Court.

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(iv) Within 30 calendar days after the hearing with the Prime Contractor and/or subcontractor, the Hearing Officer shall issue in writing to the Executive Director his/her written findings of fact, conclusions of law as to compliance and recommendations with respect to any appropriate sanctions. The Executive Director shall transmit the Hearing Officer's findings, conclusions and recommendations to the Board of Commissioners which may impose sanctions for a Prime Contractor's and/or subcontractor's noncompliance with this Ordinance including, but not limited to:

1) Withholding up to fifty percent (50%) of the current progress or final, payment due the contractor until the Administrator determines that the contractor is in compliance. Following the withholding of up to fifty percent (50%) of the current progress payment, up to one hundred percent (100%) of further progress payments may be withheld until the contractor is found to be in compliance with the requirements of this Ordinance. The amount to be withheld will be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made good faith efforts to achieve such commitments.

2) Declaring the Prime Contractor and/or subcontractor to be non-  
2) responsible and disqualify/debar the Prime Contractor and/or subcontractor from  
eligibility to  
2) bid on District construction contracts for a period of not less than one (1) year, and

not more than

Ordinance shall be

subcontractor and

2) three (3) years. An entity that is disqualified pursuant to the provisions of this

2) precluded from participation on any district contract as a Priority Contractor,

2) supplier.

For false statements, fraud, misrepresentation, or the use of false documentation, the making of false statements, fraud or misrepresentation, a contractor or subcontractor who is found to be in violation of this Ordinance shall be

and not less than twenty-four (24) months and not more than three (3) years for the third violation of this Ordinance.

;(3): Rejection

awarded to

statements, fraud or misrepresentation.

Use Of false documentation, the making of false

4) For any MBE, WBE or SBE that has misrepresented its MBE, WBE or SBE status and/or failed to operate as an independent business concern performing a Commercially Useful Function, declaring by the Director that the MBE, WBE or SBE is ineligible to participate as a MBE, WBE or SBE in District contracts; A firm that has been declared ineligible may not participate as a MBE, WBE or SBE for a period of not less than one (1) year and not more than three (3) years.

5) Forfeiting and deducting from the Prime Contractor's progress or final payments under the contract an amount up to the dollar amount of its MBE, WBE goal commitment that the contractor has failed to meet. The amount to be deducted will be based upon a determination of the extent to which the Prime Contractor made Good Faith Efforts to achieve such commitments.

6) Referring the matter to the Office of the Attorney General or Cook County State's Attorney for follow-up action.

(c) The Administrator and Director will take action to prevent a contract from being awarded to a Prime Contractor or first-tier subcontractor disqualified from bidding hereunder for the period of disqualification.

(d) The District's attorneys' fees and costs will be assessed against the Prime Contractor and/or subcontractor where the Hearing Officer makes a finding that the Prime

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Contractor or subcontractor used false documentation, made false statements, or committed fraud or misrepresentation.

(e) Notice of sanctions imposed by the Board of Commissioners for violations of the Ordinance by the Prime Contractor, subcontractor and/or supplier will be spread upon the public record by the District, including but not limited to publication in the Record of Proceedings of the Board of Commissioners, posting on the District's web site, publication in any type of media, newspaper publication and direct notice by letter to governmental entities.

f) Any sanctions imposed against an entity shall, also apply personally to all officers and directors of the entity or partners of the entity, and their successors and assigns with knowledge of the acts and omissions that give rise to the sanctions against the entity.

g) The District may take other action, as appropriate, within the discretion of the Administrator, subject to the approval of the Hearing Officer and the Board of Commissioners.

## Section 16. Other Federal Regulations

The provisions of this Ordinance shall not apply to any contract to the extent that different procedures or

standards are required by any law or regulation of the United States and nothing herein shall be interpreted to diminish or supplant the present Equal Employment Opportunity Requirements contained in Appendices B, C, G, and I of Grant funded contracts or Appendix C of non-Grant funded contracts;

#### Section 17. Reporting and Review

The Board of Commissioners 'directs the' District staff to report to the Board of Commissioners on an annual basis with respect to the; following:

- a) The level of MBE, WBE or SBE participation achieved in each year in District construction contracts subject to Appendix D.
- b) Identification of any problems with the enforcement of Appendix D; and
- c) Any recommendations with respect to improving the implementation of Appendix D.

#### Section 18. Sunset Provision

This Appendix D shall be reviewed no later than five years from its adoption and shall expire on June 4, 2020 unless the District finds that its remedial purposes have not been fully achieved and that there is a compelling interest in continuing to implement narrowly tailored remedies to redress discrimination against MBEs and WBEs so that the District will not function as a passive participant in a discriminatory market in the Metropolitan Chicago construction industry.

#### Section 19. Repeal of Prior Inconsistent Provisions

All enactments and provisions heretofore adopted by this Board of Commissioners in the area of affirmative action in connection with construction contracts subject to this Ordinance that are inconsistent with the provisions of this Ordinance are hereby expressly repealed.

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#### Section 20. Severability

If any clause, sentence, paragraph, section or part of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this Ordinance directly involved in the controversy in which the judgment shall have been rendered.

#### Section 21. Effective Dates

This amendment to revised Appendix D shall be effective and apply to all bids for contracts advertised after June 4, 2015.

ADOPTED:

Mariyana T. Spv^bulosIB^sio Board of Commissioners of the Metropolitan Water Reclamation District of

Greater Chicago

Approved as to form and legality:

Head Assistant Attorney

General Counsel

**Exhibit 5 to the Intergovernmental Agreement**

Affirmative Action Status Report [see attached]

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Exhibit 5

**AFFIDAVIT - AFFIRMATIVE ACTION STATUS REPORT** Notice: This report is required to be submitted at 25%, 50%, 75%, and 100% completion of construction

Contract Title: ■

Contract Number:

Prime Contractor's Name: Prime's Contact Name:

Status Report No.: 25% - 50% - 75% - 100%

(CIRCLE ONE)

In connection with the above-captioned contract:

For each MBE, WBE, and SBE subcontractor, including third tier contracts awarded by your MBE/WBE/SBE company, describe the work or goods or services provided in relation to this contract (indicate line items, if applicable) performed during the report period.

| MBE, WBE, and SBE Subcontractor | MBE /<br>WBE /SBE | AMOUNT OF CONTRACT | AMOUNT PAID TO DATE |
|---------------------------------|-------------------|--------------------|---------------------|
|---------------------------------|-------------------|--------------------|---------------------|

DESCRIPTION OF  
WORK/SERVICES AND/OR  
GOODS PROVIDED. BE  
SPECIFIC.

| MBE, WBE, and SBE Subcontractor | MBE /<br>WBE /SBE' | AMOUNT OF CONTRACT | AMOUNT PAID TO DATE |
|---------------------------------|--------------------|--------------------|---------------------|
|---------------------------------|--------------------|--------------------|---------------------|

DESCRIPTION OF  
WORK/SERVICES AND/OR  
GOODS PROVIDED. BE  
SPECIFIC.



| MBE, WBE, and SBE Subcontractor   | MBE /<br>WBE /SBE | AMOUNT OF CONTRACT | AMOUNT PAID TO DATE |
|---|-------------------|--------------------|---------------------|
| DESCRIPTION OF<br>WORK/SERVICES AND/OR<br>GOODS PROVIDED. BE<br>SPECIFIC. |                   |                    |                     |

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| MBE, WBE, and SBE Subcontractor   | MBE/WBE /<br>SBE | AMOUNT OF CONTRACT | AMOUNT PAID TO DATE |
|---|------------------|--------------------|---------------------|
| DESCRIPTION OF<br>WORK/SERVICES AND/OR<br>GOODS PROVIDED. BE<br>SPECIFIC. |                  |                    |                     |

| MBE, WBE, and SBE Subcontractor   | MBE /<br>WBE /SBE | AMOUNT OF CONTRACT | AMOUNT PAID TO DATE |
|---|-------------------|--------------------|---------------------|
| DESCRIPTION OF<br>WORK/SERVICES AND/OR<br>GOODS PROVIDED. BE<br>SPECIFIC. |                   |                    |                     |

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED TO MAKE THIS AFFIDAVIT. I CERTIFY THAT THE ABOVE NAMED FIRMS WERE AWARDED CONTRACT(S), PERFORMED THE WORK WITH THEIR OWN FORCES, AMOUNTS LISTED ARE ACCURATE AND PAYMENTS WERE MADE IN ACCORDANCE WITH CONTRACTUAL OBLIGATIONS. CANCELLED CHECKS AND/OR SUPPORTING INFORMATION WILL BE ON FILE FOR INSPECTION OR AUDIT.

Name of Affiant:

Title:

Signature:

(Signature of Affiant)

Date:

State of

County (City) of

This instrument was SUBSCRIBED and SWORN TO before me on

Signature of Notary Public

**Exhibit 6 to the Intergovernmental Agreement**

Insurance Requirements [see attached]

Insurance Requirements & Insurance Certificate A. The kinds and

amounts of insurance required are as follows:

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$500,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). 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 or Services to be performed, Grantee must provide Automobile Liability Insurance with limits of not less than \$300,000 per occurrence for bodily injury and property damage.

4) Professional Liability

When any professional consultants perform work or Services in connection with this Agreement, Professional Liability Insurance covering errors, omissions, or negligent acts, must be maintained with limits of not less than \$500,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

5) Medical/Professional Liability

When any medical services are performed in connection with this Agreement, Medical/Professional Liability Insurance must be provided to include coverage for errors, omissions and negligent acts related to the rendering or failure to render professional, medical or health services with limits of not less than \$500,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of 2 years.

6) Builders Risk

When any Grantee performs any construction, including improvement, betterments, and/or repairs, Grantee must provide All Risk Builders Insurance to cover materials, supplies, equipment, machinery and fixtures that are part of the structure.

B. Related Requirements

If the coverages have an expiration or renewal date occurring during the term of this Agreement, Grantee must furnish renewal certificates to the Department at the above address. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this 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 Grantee is not a waiver by the City of any requirements for Grantee to obtain and maintain the specified coverages. Grantee must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantee of its obligation to provide insurance as specified here. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work or Services or terminate this Agreement until proper evidence of insurance is provided.

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

All deductibles or self insured retentions on referenced insurance coverages must be borne by Grantee.

Grantee agrees that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

The coverages and limits furnished by Grantee in no way limit Grantee's liabilities and responsibilities specified within this Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by Grantee under this 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.

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

If Grantee or Subcontractors desire additional coverages, the party desiring additional coverages is responsible for the acquisition and cost of such additional protection.

The City of Chicago's Risk Management Division maintains the right to modify, delete, alter or change these requirements.

C. If you need additional information related to insurance, please call the office of the City Comptroller, at (312) 744-7923.