



Office of the City Clerk

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Legislation Details (With Text)

File #: SO2018-4392

Type: Ordinance **Status:** Passed

File created: 5/23/2018 **In control:** City Council

Final action: 7/25/2018

Title: Agreement with Loop-Counterpointe Pace LLC for administration, development and operation of Property Assessed Clean Energy (PACE) program

Sponsors: Emanuel, Rahm

Indexes: Miscellaneous

Attachments: 1. SO2018-4392.pdf, 2. SO2018-4392 (V1).pdf, 3. O2018-4392.pdf

Date	Ver.	Action By	Action	Result
8/1/2018	1	Office of the Mayor	Signed by Mayor	
7/25/2018	1	City Council	Passed as Substitute	Pass
7/23/2018	1	Committee on Energy, Environmental Protection and Public Utilities	Substituted in Committee	
7/23/2018	1	Committee on Finance	Recommended to Pass	
5/23/2018	1	City Council	Referred	

SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago, Illinois (the "City"), a municipal corporation and home rule unit of local government of the State of Illinois authorized pursuant to the Property Assessed Clean Energy Act (50 ILCS 50/1 et seq.) (the "Act") to establish a property assessed clean energy program (the "PACE Program"), to finance energy projects (as defined in the Act), to create a PACE area (as defined in the Act) and contract with a program administrator (as defined in the Act) to assist it in developing, launching, and operating a PACE Program pursuant to the Act; and

WHEREAS, the financing of energy projects is a valid public purpose and the City desires to establish a PACE area and PACE Program pursuant to the Act in order to finance energy projects; and

WHEREAS, the Department of Planning and Development ("DPD") of the City has distributed a Request for Proposals for the selection of a program administrator to assist the City with the development and operation of a PACE Program; and

WHEREAS, the City desires to authorize the execution of an Agreement with a program administrator for the PACE area setting forth the services to be provided by the program administrator in assisting the City with the development, launch and operation of the PACE Program.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO, AS FOLLOWS:

Section 1. The above recitals are incorporated herein and made a part hereof.

Section 2. The Commissioner of DPD or a designee of such Commissioner is hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver an Agreement (the "Agreement") with the program administrator in substantially the form of Exhibit A attached hereto and made a part hereof, with such changes, deletions and insertions as shall be approved by the persons executing the Agreement and such other supporting documents as may be necessary or appropriate to carry out and. comply with the provisions of such Agreement.

Section 3. Loop-Counterpointe PACE LLC, a Delaware limited liability company, is hereby designated as the program administrator for the PACE area to be established by the City pursuant to the Act and in accordance with the Agreement.

Section 4. If any provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the' other provisions of this Ordinance.

Section 5. All ordinances, resolutions, motions or orders in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 6. This Ordinance shall take effect and be in full force immediately upon its passage and approval.

Exhibit A

Agreement (Attached)

AGREEMENT

BETWEEN

**THE CITY OF CHICAGO DEPARTMENT OF PLANNING AND
DEVELOPMENT**

AND

LOOP-COUNTERPOINTE PACE LLC

/

**PHASE I (PROGRAM DESIGN) AND PHASE II (BOND UNDERWRITING AND PROGRAM
OPERATION) FOR CITY OF CHICAGO PROPERTY ASSESSED CLEAN
ENERGY (PACE) PROGRAM**

**RAHM EMANUEL MAYOR
DAVID L. REIFMAN DPD COMMISSIONER**

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AGREEMENT

This Agreement is entered into as of the _____ day of _____ ("Effective Date"), by and between Loop-Counterpointe PACE LLC, a Delaware limited liability company, ("Contractor"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Planning and Development ("City"), at Chicago, Illinois.

The City advertised a Request for Proposals (RFP) seeking a program administrator ("Program Administrator" or "PA") to provide services in developing, launching, and operating a Property Assessed Clean Energy (PACE) program. The PACE program must meet all requirements included in the State of Illinois statute HB-2831 (Public Act 100-0077), as amended from time to time, which authorizes local governments in Illinois to develop and administer PACE programs. PACE is a voluntary, opt-in financing tool for property owners that uses a loan to fund energy or water conservation projects which is paid back through a special assessment on the assisted properties. The City selected the Contractor to perform various functions involving professional services in Phase I pertaining to the design of the PACE program, and for underwriting and program operations in Phase II, including but not limited to implementing a marketing and education plan, a program for contractor workforce development, working with property owners on all aspects of individual projects, including project financing, and raising capital, as further described herein in Exhibits 1A and J_B. Contractor responded to the RFP in which response Contractor represented that it can fulfill the requirements of the City, and has set forth various representations regarding its ability to do so in its response dated June 11, 2018. Contractor's response to the RFP is attached hereto as Exhibit 7 solely for purposes of incorporating Contractor's promises and representations and the description of the activities and services Contractor will perform in fulfilling the City's PACE program requirements. In the event of any conflict between Contractor's response to the RFP hereto as Exhibit 7 and this Agreement, this Agreement shall control.

The City and Contractor agree as follows:

TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

1 Definitions

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

"Additional Services" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 2.1, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 9.3 of this Agreement before Contractor is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

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

"Commissioner" means the Commissioner of the City of Chicago Department of Planning and Development, and any representative authorized in writing to act on the Commissioner's behalf.

"Department" or "DPD" means the City of Chicago Department of Planning and Development, or any successor departments.

"Services" means, collectively, the services, duties and responsibilities described in Article 2, Exhibit 1A, and Exhibit IB of this Agreement and any and all work, necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

"Subcontractor" means any person who is hired and directed by, and answerable to, Contractor to fulfill a requirement of this Agreement. The term "Subcontractor" shall include a Subcontractor of a Subcontractor. The term "Subcontractor" shall not include (i) third parties retained by a party other than the Contractor (i.e., retained by a participant in the PACE program and/or a financing source under the PACE program), and (ii) third parties retained to provide specialized ancillary services necessary for, but not included within, the fulfillment of this Agreement. Such specialized ancillary services typically involve a work process and end product that is not directed or shaped by the Contractor, but entirely or substantially within the control of the retained party.

2 Interpretation

a) The term "include" (in all its forms) means "include, without limitation" unless the context clearly states otherwise.

b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.

(c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal

entities, including public bodies, as well as natural persons.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.

f) All references to a number of days mean calendar days, unless indicated otherwise.

1.3 Incorporation of Exhibits

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

Exhibit 1A	Phase I: Program Design, Scope of Services and Time Limits for Performance
Exhibit IB	Phase II: Bond Underwriting and Program Operations, Scope of Services and Time Limits for Performance Exhibit 2 Schedule of Compensation
Exhibit 3	Special Conditions Regarding MBE/WBE Commitment and MBE/WBE Compliance Plan Exhibit 4 Economic Disclosure Statement and Affidavit
Exhibit 5 Personnel	Insurance Requirements and Evidence of Insurance Exhibit 6 List of Key
Exhibit 7	Contractor's Response to City's Request for Proposals

ARTICLE 2. DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1 Scope of Services

This description of Services is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Agreement. Contractor must provide the Services in accordance with the standards of performance set forth in Section 2.3. The Services that Contractor must provide are described in Exhibits 1A-1B, Scope of Services and Time Limits for Performance.

2 Deliverables

In carrying out its Services, Contractor must prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City.

The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, if it is possible

to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 8.1.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its obligations under this Agreement.

3 Standard of Performance

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

Contractor must be appropriately licensed to perform the Services, if required by law, and must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as may be required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its Subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Department and delivered in a timely manner consistent with the requirements of this Agreement.

If Contractor fails to comply with the foregoing standards, Contractor must, at the City's option, perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure, unless the reason is failure to have and maintain required licensure. See subsection 8.1 (b)(ii) regarding failure to comply with licensure requirements.

4 Personnel

a) Adequate Staffing

Contractor must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Contractor must include among its staff the Key Personnel and positions as identified below.

b) Key Personnel

Contractor must not reassign or replace Key Personnel without the written consent of the City. "Key Personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Section 2.4(b). The Department may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor must immediately suspend the key person or persons from

performing Services under this Agreement and must replace him or them in accordance with the terms of this Agreement. Key Personnel, if any, are identified in Exhibit 6.

(c) Salaries and Wages

Contractor and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement

unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Contractor underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Contractor, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Contractor to the respective employees to whom they are due. The parties acknowledge that this Section 2.4(c) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

2.5 Minority Participation; Women's Business Enterprises ("WBE") Commitment

a) Minority Participation: Minority participation in this Agreement is to be achieved at no cost to the City through Loop Capital Markets, LLC, a member of the LLC that is the Contractor. Loop Capital Markets, LLC represents that it is 88.93% owned by minorities and that 50% of the distributions of the Contractor shall go to Loop Capital Markets, LLC. No further minority participation is required under this Agreement. In the event of any change in any of the foregoing, Contractor will immediately notify the City, and Contractor will be required to have MBE participation as required by Exhibit 3. For purposes of minority participation, Exhibit 3 shall have no effect unless anything in this subsection (a) changes, in which case Exhibit 3 shall apply.

b) WBE Commitment: Contractor's completed Schedules C-1 and D-1 in Exhibit 3, evidencing its compliance with the City's women's business enterprise requirements, are a part of this Agreement. Contractor must utilize women's business enterprises at the greater of the amounts listed in those Schedules C-1 and D-1 or the percentages listed in them as applied to all payments received from Program Administrator Fees, as described in Exhibit 1A. Section A.K.

6 Insurance

Contractor must provide and maintain at Contractor's own expense, during the term of this Agreement and any time period following expiration if Contractor is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 5 of this Agreement, insuring all operations related to this Agreement.

7 Indemnification

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

- i) injury, death or damage of or to any person or property;
- ii) any infringement or violation of any property right (including any patent, trademark or copyright);

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iii) Contractor's failure to perform or cause to be performed Contractor's promises and obligations as and when required under this Agreement, including Contractor's failure to perform its obligations to any Subcontractor;

iv) the City's exercise of its rights and remedies under Section 8.2 of this Agreement; and

v) injuries to or death of any employee of Contractor 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 Contractor's breach of this Agreement or to Contractor's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.

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

d) To the extent permissible by law, Contractor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any Losses, including any claim by any employee of Contractor 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 Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

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

2.8 Ownership of Documents and Other Items

All Deliverables, data, findings or information, in any form prepared, assembled or encountered by or provided to Contractor under this Agreement shall be property of the City, except that the following shall not be property of the City or deemed works made for hire:

a) Contractor's or its members and their affiliates' proprietary software platform, proprietary techniques and know-how and methods, trade secrets, form documents (other than form documents created for use solely by the City) under this engagement ("Contractor Forms"), patents, trademarks, copyrights and other intellectual property;

b) Confidential or proprietary information provided to Contractor by its Subcontractors and vendors; and

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(c) Confidential or proprietary information provided to Contractor by property owners in connection with their applications for financing.

9 Copyright Ownership

Subject to the limitations in clauses (a) through (c) set forth in Section 2.8, Contractor and the City intend that, to the extent permitted by law, the Deliverables to be produced by Contractor at the City's instance and expense under this Agreement are conclusively deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 et seq., and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement. Documentation created for use solely by the City shall be deemed works made for hire. Notwithstanding, the City shall have a perpetual, irrevocable, fully paid right to use the Contractor Forms, provided it uses them as intended, or as not intended with Contractor approval. If the City uses Contractor Forms not as intended or modifies them without Contractor approval, then Contractor shall have no liability to the City to the extent any Losses result from such unapproved use or modification. Nothing in this section 2.9 shall be construed as the City indemnifying the Contractor. This section 2.9 survives termination of the Agreement.

10 Records and Audits

a) Records

i) Contractor must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, promptly in accordance with the time limits

prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement.

ii) Contractor must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period that is the longer of (A) 5 years after the final payment made in connection with this Agreement, or (B) as directed by the Local Records Act (50 ILCS 205) and relevant records retention schedule. Contractor must not dispose of such records following the expiration of the relevant period without notification of and written approval from the City in accordance with Article 10.

In addition to the records to be stored by Contractor, all records that are possessed by Contractor in its service to the City to perform a governmental function are public records of the City pursuant to the Illinois Freedom of Information Act ("FOIA*"), unless the records are exempt under FOIA. FOIA requires that the City produce records in a very short period of time. If the Contractor receives a request from the City to produce records, the Contractor shall do so within 72 hours of the notice.

b) Audits

i) Contractor and any of Contractor's Subcontractors must furnish the Department with all information that may be requested pertaining to (i) the performance, (ii) compliance with MBE/WBE policies and programs and (iii) User Fees from the Services. Contractor must maintain records showing actual User Fees collected. Contractor must keep books, documents, papers, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of its Services.

ii) Contractor must maintain its books, records in accordance with generally accepted accounting principles and practices, consistently applied throughout.

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iii) No provision in this Agreement granting the City a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents which the City would have had in the absence of such provisions.

iv) The City may in its sole discretion audit the records of Contractor or its Subcontractors, or both, at any time during the term of this Agreement or within six years after the Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of any such audit, it is determined that Contractor has underpaid the City in the audited period, the City will notify Contractor. Contractor must then promptly pay the City for the amount of any underpayment and also some or all of the cost of the audit, as follows:

A. If the audit has revealed underpayment to the City representing less than 5% of the total value payable to the City pursuant to this Agreement in the audited period, then the Contractor must reimburse the City for 50% of the cost of the audit that the City conducts;

B. If, however, the audit has revealed underpayment to the City representing 5% or more of the total value payable to the City pursuant to this Agreement in the audited period, then Contractor must reimburse the City for the full cost of the audit.

C. If the audit reveals that the City was overpaid, the City will pay to the Contractor the sum equal to the amount of such overpayment.

Failure of Contractor to reimburse the City in accordance with subsection A or B above is an event of default under Section 8.1 of this Agreement, and Contractor will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

11 Confidentiality

a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Contractor under this Agreement, are confidential, except (i) to the extent meant for release to the public or to potential participants in the PACE program, (ii) as otherwise specifically authorized in this Agreement or (iii) as may be required by law. Further, all documents and other information provided to Contractor by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Contractor must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.

b) Contractor must not issue any publicity news releases or grant press interviews that mention the City or any City officials without the prior written consent of the Commissioner; provided, however, that this Section 2.11 shall not preclude general marketing activities.

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

12 **Assignments and Subcontracts**

(a) Contractor must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement: (i) unless otherwise provided for elsewhere in this Agreement; or (ii) without the express written consent of the Department. The absence of such a provision or written

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consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Department, including approvals for the use of any Subcontractors, operate to relieve Contractor of any of its obligations or liabilities under this Agreement.

(b) All Subcontractors are subject to the prior approval of the Department. Approval for the use of any Subcontractor in performance of the Services is conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to perform the Services in accordance with the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Contractor personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement.

c) Contractor, upon entering into any agreement with a Subcontractor, must furnish upon request of the Department a copy of its agreement. Contractor must ensure that all subcontracts contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

d) Contractor must not transfer or assign any funds or claims due or to become due under this Agreement without the prior written approval of the Department. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Contractor under this Agreement, without such prior written approval, has no effect upon the City.

e) The City reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any

successor.

2.13 Cooperation

Contractor must at all times use commercially reasonable efforts to cooperate with the City. If this Contract is terminated for any reason, or if it is to expire on its own terms, Contractor must make commercially reasonable efforts to assist an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the commercially reasonable requests and requirements of the City in connection with the termination or expiration.

ARTICLE 3. DURATION OF AGREEMENT

3.1 Term of Performance; Schedule for Phase I Services

a) This Agreement takes effect as of the Effective Date and continues, except as provided under Article 8, for three (3) years, as that date may be extended under Section 3.3.

The City will establish the start and expiration dates at the time of formal award and release of the Contract.

b) Schedule for Phase 1 Services must be completed within the timeframes set forth in

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Exhibit 1A.

2 Timeliness of Performance

a) Contractor must provide the Services and Deliverables within the time limits required under any request for services pursuant to the provisions of Section 2.1 and Exhibit 1.

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

3 Agreement Extension Option

The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to two (2) years, under the same terms and conditions as this original Agreement, by notice in writing to Contractor.

ARTICLE 4. COMPENSATION

4.1 No Compensation from City

The design and administration of the City of Chicago PACE program will be self-financed through Program Administrator Fees. No City funds will be used to develop the PACE program or to finance the PACE program's operations. Additional compensation information is set forth in Exhibit 2.

ARTICLE 5. DISPUTES

5.1 Procedure for Bringing Disputes to the Department

The Contractor and using Department must attempt to resolve all disputes arising under this Contract in good faith, taking such measures as, but not limited to investigating the facts of the dispute and meeting to discuss the issue(s).

In order to bring a dispute to the Commissioner of a Department, Contractor must provide a general statement of the basis for

its claim, the facts underlying the claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the claim. By submitting a claim, the Contractor certifies that:

- A. The claim is made in good faith;
- B. The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;
- C. The amount of the claim accurately reflects the amount that the claimant believes is due from the City; and
- D. The certifying person is duly authorized by the claimant to certify the claim.

The Commissioner shall have 30 days from receipt of the claim to render a written "final decision of the Commissioner" stating the Commissioner's factual and contractual basis for the decision. However, the Commissioner may take an additional period, not to exceed 10 days, to render the final decision. If the-Commissioner does not render a "final decision of the Commissioner" within the prescribed time frame, then the claim should be deemed denied by the Commissioner.

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The decision of the Commissioner is final and binding. The sole and exclusive remedy to challenge the decision of the Commissioner is judicial review by means of a common law writ of certiorari.

ARTICLE 6. COMPLIANCE WITH ALL LAWS

1 Compliance with All Laws Generally

a) Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 6, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Notwithstanding anything in this Agreement to the contrary. Contractor must perform the Services in accordance with, and to assist the City in complying with, the PACE statute. To the extent applicable, Contractor must require all Subcontractors to do so, also. Further, Contractor must execute an Economic Disclosure Statement and Affidavit ("EDS") in the form attached to this Agreement as Exhibit 4. Notwithstanding acceptance by the City of the EDS, Contractor's failure in the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Contractor must promptly update its EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and -accurate. Contractor agrees that Contractor's failure to maintain current throughout the term and any extensions of the term, the disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, shall constitute an event of default.

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

2 Nondiscrimination (a) Contractor

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

(i) Federal Requirements

Contractor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Contractor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Civil Rights Act of 1964, 42

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

ii) **State Requirements**

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code §750 Appendix A. Furthermore, Contractor must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and all other applicable state statutes, regulations and other laws.

iii) **City Requirements**

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

(b) Subcontractors

Contractor must incorporate all of this Section 6.2 by reference in all agreements entered into with any suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the federal, state, and local agencies charged with enforcing such laws and regulations, including the Chicago Commission on Human Relations.

3 Inspector General

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

4 MacBride Ordinance

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

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In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if Contractor conducts any business operations in Northern Ireland, the Contractor must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section 6.4 do not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

5 Business Relationships with Elected Officials

Pursuant to MCC Sect. 2-156-030(b), it is illegal for any elected official, or any person acting at the direction of such official, to contact either orally or in writing any other City official or employee with respect to any matter involving any person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. In addition, no elected official may participate in any discussion in any City Council committee hearing or in any City Council meeting or vote on any matter involving the person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months.

Violation of MCC § 2-156-030 by any elected official with respect to this contract will be grounds for termination of this contract. The term financial interest is defined as set forth in MCC Chapter 2-156.

6 Wages

Contractor must pay the highest of (1) minimum wage specified by Mayoral Executive Order 2014-1; (2) "Living Wage" rate specified by MCC Sect. 2-92-610; (3) Chicago Minimum Wage rate specified by MCC Chapter 1-24, or (4) the highest applicable State or Federal minimum wage.

(a) Minimum Wage, Mayoral Executive Order 2014-1

Mayoral Executive Order 2014-1 provides for a fair and adequate Minimum Wage to be paid to employees of City contractors and subcontractors performing work on City contracts. A copy of the Order may be downloaded from the Chicago City Clerk's website at:

<<http://chicityclerk.com/wp-content/uploads/2014/09/Executive-Order-No.-2014-1>> .pdf

If this Agreement was advertised on or after October 1, 2014, Contractor must comply with Mayoral Executive Order 2014-1 and any applicable regulations issued by the CPO. As of July 1, 2018, the Minimum Wage to be paid pursuant to the Order is \$13.80 per hour. The Minimum Wage must be paid to:

All employees regularly performing work on City property or at a City jobsite.

All employees whose regular work entails performing a service for the City under a City contract.

Beginning on July 1, 2015, and every July 1 thereafter, the hourly wage specified by the Executive Order shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor. Any hourly wage increase shall be rounded up to the nearest multiple of \$0.05. Such increase shall remain in effect until any subsequent adjustment is made.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of contractors' operations, does not directly relate to the services provided to the City under the contract, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on City property or at a City jobsite. It is also not required to be paid by employers that are 501(c)(3) not-for-profits.

Except as further described, the Minimum Wage is also not required to be paid to categories of employees subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., in force as of the date of this Agreement or as amended. Nevertheless, the Minimum Wage is required to be paid to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law.

Additionally, the Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by Mayoral Executive Order 2014-1, if that collective bargaining agreement was in force prior to October 1, 2014 or if that collective bargaining agreement clearly and specifically waives the requirements of the order.

If the payment of a Base Wage pursuant to MCC Sect. 2-92-610 is required for work or services done under this Agreement, and the Minimum Wage is higher than the Base Wage, then the Contractor must pay the Minimum Wage. Likewise, if the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Contractor must pay the prevailing wage.

Contractors are reminded that they must comply with Municipal Code Chapter 1-24 establishing a minimum wage.

(b) Chicago "Living Wage" Ordinance

(i) Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("Covered Employees"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

A) If Contractor has 25 or more full-time employees, and

B) If at any time during the performance of this Agreement, Contractor and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "Performing Parties") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then

C) Contractor must pay its Covered Employees, and must ensure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly

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rate as determined in accordance with this provision (the "Base Wage") for all Services performed under this Agreement.

ii) Contractor's obligation to pay, and to ensure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.

iii) As of July 1, 2018, the Base Wage is \$12.55 per hour, and each July 1 thereafter, the Base Wage will be adjusted using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. The currently applicable Base Wage is available from the Department of Procurement Services. At all times during the term of this Agreement, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Contractor and all other Performing Parties must pay the prevailing wage rates.

iv) Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Contractor agrees to provide the City with documentation acceptable to the Commissioner demonstrating that all Covered Employees, whether employed by Contractor or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Contractor and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

v) Not-for-Profit Corporations: If Contractor is a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions of subsections (a) through (d) above do not apply.

6.7 Environmental Warranties and Representations

In accordance with Section 11-4-1600(c) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

- 7-28-390 Dumping on public way;
- 7-28-440 Dumping on real estate without permit;
- 11-4-1410 Disposal in waters prohibited;
- 11-4-1420 Ballast tank, bilge tank or other discharge;
- 11-4-1450 Gas manufacturing residue;
 - 11-4-1500 Treatment and disposal of solid or liquid waste;
 - 11-4-1530 Compliance with rules and regulations required;
- 11-4-1550 Operational requirements; and
- 11-4-1560 Screening requirements.

During the period while this Agreement is executory. Contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Commissioner. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

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This section does not limit Contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement.

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect Contractor's eligibility for future contract awards.

6.8 Prohibition on Certain Contributions

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly

or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

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

Contractor shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayors political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Contract, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Contract, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Contractor violates this provision or Mayoral Executive Order No. 201 1-4 prior to award of the Contract resulting from this specification, the Commissioner may reject Contractor's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Contractor and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or

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(iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a "political contribution" as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in MCC Ch. 2-156, as amended.

9 Firms Owned or Operated by Individuals with Disabilities

The City encourages consultants to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

10 Ineligibility to do Business with City

Failure by the Contractor or any Controlling Person (defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code shall render this Contract voidable or subject to termination, at the option of the Commissioner. Contractor agrees that Contractor's failure to maintain eligibility (or failure

by Controlling Persons to maintain eligibility) to do business with the City in violation of Section 1-23-030 of the Municipal Code shall constitute an event of default.

11 Duty to Report Corrupt or Unlawful Activity

Pursuant to §2-156-018 of the Municipal Code, it is the duty of the Contractor to report to the Inspector General, directly and without undue delay, any and all information concerning conduct which it knows to involve corrupt activity. "Corrupt Activity" means any conduct set forth in Subparagraph (a)(1), (2) or (3) of §1-23-020 of the Municipal Code. Knowing failure to make such a report will be an event of default under this Agreement. Reports may be made to the Inspector General's toll free hotline, 866-IG-TIPLIME (866-448-4754).

12 Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

ARTICLE 7. SPECIAL CONDITIONS 7.1 Warranties and

Representations

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

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

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

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

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

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

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

g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 8.2 and 8.3 of this Agreement;

and

(h) warrants and represents that neither Contractor nor an Affiliate of Contractor (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce (or their successors), or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment. "Affiliate of Contractor" means a person or entity that directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common control with Contractor. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity (either acting individually or acting jointly or in concert with others) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

7.2 Ethics

(a) In addition to the foregoing warranties and representations. Contractor warrants:

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

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

(b) Contractor must comply with Chapter 2-156 of the Municipal Code. Contractor acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156, including any contract entered into with any person who has retained or employed a non-registered lobbyist in violation of Section 2-156-305 of the Municipal Code is voidable as to the City.

3 Joint and Several Liability

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

4 Business Documents

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

5 Conflicts of Interest

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

b) Contractor represents that it, the members of the Contractor, and to the best of its knowledge, its Subcontractors, if any (Contractor, its members, and Subcontractors will be collectively referred to in this Section 7.5 as "Consulting Parties") have no direct or indirect conflict in any manner or degree with the performance of its Services under this Agreement.

c) Consulting Parties are not permitted to perform any Services for the City on applications or other documents by any of Consulting Parties' past or present clients. If Consulting Parties become aware of such a relationship, they must immediately stop work on the assignment causing the conflict and notify the Commissioner, who, in his sole and absolute discretion, may permit work to continue with such measures as he believes necessary.

d) Further, Consulting Parties, without Commissioner approval, must not assign any person having any conflicting interest to perform any Services under this Agreement or have access to any confidential information (as described in Section 2.11 of this Agreement). Notwithstanding the foregoing, in no event shall Consulting Parties assign any person having a direct economic interest in any particular financing project to perform work on any such project.

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Non-Liability of Public Officials

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

7 EDS / Certification Regarding Suspension and Debarment

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Contractor certifies, as further evidenced in the EDS attached as Exhibit 4, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If Contractor or any lower tier participant is unable to certify to this statement, it must attach an explanation to the Agreement.

8 Disclaimer of Damages

a) Under no circumstances will the City or its respective officers, directors, employees, agents, or representatives be liable to Contractor for any damages or losses arising out of or in connection with this Agreement, including, but not limited to, indirect, special, incidental, consequential, exemplary or punitive damages including, but not limited to, any lost profits, however caused and under any theory of liability, at law or equity, including, but not limited to, contract, warranty, strict liability or tort, including negligence.

b) Except for (i) Contractor's willful, fraudulent, criminal, or intentional misconduct and (ii) third party claims covered by Contractor's indemnification obligations in Section 2.7 above, under no circumstances will the Contractor or its respective officers, directors, employees, agents, or representatives be liable to the City for any damages or losses arising out of or in connection with this Agreement, including, but not limited to, indirect, special, incidental, consequential, exemplary or punitive damages including, but not limited to, any lost profits, however caused and under any theory of liability, at law or equity, including, but not limited to, contract, warranty, strict liability or tort, including negligence.

9 Use of City Logo

With the City's permission, Contractor may use the City's logo on PACE program materials.

ARTICLE 8. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET

8.1 Events of Default Defined

The following constitute events of default:

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

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b) Contractor's material failure to perform any of its obligations under this Agreement including the following:

- i) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services;
- ii) Failure to have and maintain all professional licenses required by law to perform the Services;
- iii) Failure to timely perform the Services;
- iv) Failure to perform the Services in a manner reasonably, satisfactory to the Commissioner or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
- v) Failure to promptly re-perform, as required, within a reasonable time and at no cost to the City, Services that are rejected as erroneous or unsatisfactory;
- vi) Discontinuance of the Services for reasons within Contractor's reasonable control;
- vii) Failure to comply with Section 6.1 in the performance of the Agreement;
- viii) Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is no longer complete or accurate;
- ix) Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination; and
- x) Any other acts specifically stated in this Agreement as constituting an act of default.

c) Any change in ownership or control of Contractor without the prior written approval of the Commissioner (when such prior approval is permissible by law), which approval the Commissioner will not unreasonably withhold.

d) Contractor's default under any other material agreement it may presently have or may enter into with the City for the duration of this Agreement. Contractor acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other agreements.

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

8.2 Remedies

- (a) Notices. The occurrence of any event of default permits the City, at the City's sole option, to declare Contractor in default. The Commissioner may, in his sole discretion, give Contractor

an opportunity to cure such default within a certain period of time, which period of time must not exceed 30 days, unless extended by the Commissioner.

The Commissioner will give Contractor written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice"). If the Commissioner gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the Commissioner decides not to terminate, this decision will not preclude him from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Commissioner may give a Default Notice if Contractor fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 8.2 and Article 10, Contractor must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City.

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

i) The right to terminate this Agreement in its entirety, or with respect to any particular PACE program financing projects currently in existence at the time of termination or prospective PACE program financing projects;

ii) The right of specific performance, an injunction or any other appropriate equitable remedy;

iii) The right to money damages, subject to the limitations set forth in Section 7.8;

iv) The right to deem Contractor non-responsible in future contracts to be awarded by the City;

v) The right to declare default on any other contract or agreement Contractor may have with the City.

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

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

8.3 Early Termination

(a) In addition to termination under Section 8.2 of this Agreement, the City may terminate this Agreement in its entirety, or with respect to any particular PACE program financing projects

currently in existence at the time of termination or prospective PACE program financing projects, at any time by a notice in writing from the City to Contractor. The City will give notice to Contractor in accordance with the provisions of Article 10 (a "Termination Notice"). If the City elects to terminate this Agreement, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City within 10

days of receipt of the Termination Notice.

b) After the Termination Notice is received, Contractor must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. In the event of any termination under this Section 8.3, Contractor shall be entitled to charge Program Administrator Fees for all financings not terminated that it completes.

c) Upon termination of this Agreement in its entirety pursuant to this Section 8.3, the right to use Contractor Forms, as defined in Section 2.9, shall automatically and immediately be revoked, without any required action of the Contractor or any other party, except as necessary to permit the City to complete financing projects in process at the time of termination.

d) Contractor must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Contractor will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against Contractor or the City.

e) If the City's election to terminate this Agreement for default under Sections 8.1 and 8.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 8.3.

4 Suspension

The City may at any time request that Contractor suspend its Services, or any part of them, by giving 15 days prior written notice to Contractor or upon informal oral, or one day in the event of emergency. Contractor must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Commissioner and such equitable extension of time as may be mutually agreed upon by the Commissioner and Contractor when necessary for continuation or completion of Services.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any 12 month period.

5 Right to Offset

(a) In connection with Contractor's performance under this Agreement, the City may offset any incremental costs and other damages the City incurs in any or all of the following circumstances:

- i) if the City terminates this Agreement for default or any other reason resulting from Contractor's performance or non-performance;
- ii) if the City exercises any of its remedies under Section 8.2 of this Agreement;

if the City has any credits due or has made any overpayments under this

The City may offset these incremental costs and other damages against any future Program Administrator Fees due to Contractor for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those incremental ; costs and other damages, Contractor is liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

b) As provided under Section 2-92-380 of the Municipal Code, the City may set off from Contractor's future Program Administrator Fees due to Contractor an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and the amount of any debt owed by Contractor to the City as those

italicized terms are defined in the Municipal Code:

c) In connection with any liquidated or unliquidated claims against Contractor, and without breaching this Agreement, the City may set off a portion of the Program Administrator Fees due Contractor under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against Contractor unrelated to this Agreement. When the City's claims against Contractor are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse Contractor to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

ARTICLE 9. GENERAL CONDITIONS 9.1

Entire Agreement

a) General

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

b) No Collateral Agreements

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

c) No Omissions

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Contractor acknowledges that Contractor was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Contractor did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Contractor relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

2 Counterparts

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

3 Amendments

Except as provided in Section 3.3 of this Agreement, no changes, amendments, modifications or discharge of this

Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Contractor and by the Commissioner or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 9.3.

Whenever under this Agreement Contractor is required to obtain the City's prior written approval, the effect of any approval that may be granted pursuant to Contractor's request is prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event is approval permitted to apply retroactively to a date before the approval was requested.

4 Governing Law and Jurisdiction

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

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

5 Severability

If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or

of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

6 Assigns

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

7 Waiver

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

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

8 Independent Contractor

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

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

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

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

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

(c)(i) The City is subject to the June 16, 2014 the "City of Chicago Hiring Plan" (the "2014

City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69

C 2145 (United State District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

ii) Contractor is aware that City policy prohibits City employees from directing any « individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Agreement are employees or subcontractors of Contractor, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.

iii) Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

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

inquiries by OIG Hiring Oversight related to the contract.

(d) The parties agree that this Contract is solely for the benefit of the parties and nothing herein is intended to create any third party beneficiary rights for subcontractors or other third parties.

ARTICLE 10. NOTICES

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

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

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A copy of any communications or notices to the City relating to Contract interpretation, a dispute, or indemnification obligations shall also be sent by the same means set forth above to:

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

If to Contractor: Loop-Counterpointe PACE LLC
c/o Loop Capital, LLC 111 West Jackson Blvd., Suite 1901
Chicago, Illinois 60604 Attention: Chairman

and

Loop-Counterpointe PACE LLC c/o Counterpointe Energy Solutions
LLC 1700 East Putnam Avenue, Suite 208 Old Greenwich,
Connecticut 06870 Attention: Eric J. Alini

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 10. Notices delivered by mail are considered received three days after mailing in accordance with this Article' 10. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 11. AUTHORITY

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

[Signature Pages, Exhibits and Schedules follow.]

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**SIGNATURE PAGE(S) SIGNED at Chicago, Illinois:
CITY OF CHICAGO**

Commissioner, Department of Planning and Development

CONTRACTOR

LOOP-COUNTERPOINTE PACE LLC

By: _

Name: _ Its:

By:.

Name: _ Its:

State of County of

of person/s) as (type of authority, e.g., officer, trustee, etc.) of (date) by
on behalf of whom instrument was executed).

(name/s
_(name of party

(Signature of Notary Public)

State of County of
(date) by

This instrument was acknowledged before me on
of person/s) as (type of authority, e.g., officer, trustee, etc.) of
on behalf of whom instrument was executed).

(name/s
(name of party

(Signature of Notary Public)

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EXHIBIT 1A

PHASE 1 (PROGRAM DESIGN): SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE

This Exhibit 1A sets forth the Contractor's obligations with respect to design and setup of the PACE program. All other Contractor obligations, including additional scopes of work and any additional terms and conditions which may be required for such work, are set forth in Exhibit IB.

A.) Phase I: Program Setup

Task 1: Program Setup

In this phase of the project, the Contractor will develop all program materials, guidelines, and documentation processes needed prior to the formal program launch. Deliverables include the program guide; standard application forms for building owners; the standard PACE contract; and any other program materials needed.

The Contractor will also provide information in the Program Setup phase as to how the PACE program may be structured so that it could be consistent with or align with the PACE programs of other local governments in Illinois, including but not limited to Cook County.

In addition, the Illinois state statute requires the City to provide a specific report at the time the City passes an ordinance to authorize PACE. Under this scope of work, the Contractor will develop and write the report needed at time of ordinance passage, referred to as the "PACE Program Report," and the City will write the ordinance needed to authorize PACE ("Program Ordinance"). The Contractor, in designing the PACE program, shall act as a fiduciary to the City. The PACE Program Report that is included in the Program Ordinance shall be as approved by the City; nothing herein shall be construed as waiving the City's role in approving the draft report created by the Contractor under this Phase I or in modifying it as necessary to maximize benefits to the City and program participants, meeting statutory objectives, and eliminating conflicts of interest.

The PACE Program Report needed at time of ordinance passage includes all of the following items. The Contractor will work with the City team to include each item listed below in the PACE Program Report, and to set up a process for each of the following program elements:

- A. Plan to raise capital: the City intends to raise capital by issuing bonds. The overall process will be briefly described in the PACE Program Report. In addition, the Contractor (or its assignee) would be the entity to purchase the bonds, but the Contractor may then re-sell the bonds, subject to applicable state and federal laws and in consultation with the City. Note: If the state statute is amended, then other processes may be available for raising capital. The Contractor should also include basic information about the purchase of bonds, including any requirements around interest rates and the maximum maturity period. The Contractor prefers both of the options to purchase the bonds, or assign its rights to purchase the bonds to another entity, depending on other factors. Note that the City reserves the right to approve the entity assigned to purchase the bonds, if the Contractor prefers to assign the bonds to a third party. The Contractor recognizes that subject to applicable Illinois law, an entity other than the City may issue PACE bonds. To the extent that applicable laws related to, or that impact, the

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PACE program is altered, the Contractor and the City shall negotiate in good faith a resolution to any issues raised thereby.

- B. Form of the assessment contract between the City of Chicago and the record holder governing the terms and conditions of financing and assessment under the program. The Contractor will work with the City to develop the outline for a standard contract used in this program. The contract may need to specify in the terms that the record owner is required to report certain information to the Contractor as part of program participation.
- C. A method for determining interest rates on assessment installments, repayment periods, and the maximum amount of an assessment. The Contractor will set the process for determining these items in collaboration with City staff.
- D. Maximum aggregate annual dollar amount of all financing provided by or arranged by the Contractor under the program. This will be determined by the Contractor and could be a not-to-exceed cap on all financing provided each year.
- E. Explanation of how assessments will be made and collected. For this portion of the scope of work, the City will assist the Contractor in determining the process of how assessments will be made and collected. One option will be that the payments are made directly from the property owner to the PA, along with any User Fees that need to be collected. The City also assumes that assessments will be recorded prior to project initiation, because if the assessment is not recorded until work is complete, it can deter many projects.
- F. Application process for projects to receive PACE funding: the Contractor will work with the City to develop the application process and any standard application forms.
- G. Eligibility requirements for financing energy projects under the program: the Contractor will identify and describe the types of energy and water projects to be included in the program, and any eligibility or technical requirements. These requirements for the PACE program design would be approved by the City. Once requirements are set, the Contractor would ensure that all projects meet the program requirements. The requirements could be based on the state or utility's technical reference manual or other utility criteria for energy efficiency incentive and rebate programs. Additional requirements may include an unbiased, professional assessment, such as a professional energy audit.
 - i. The Contractor will recommend whether an energy audit is required on a programmatic basis. If audits are recommended, the Contractor will also make a recommendation as to the level of audit needed. For example, projects below a certain cost amount could require an ASHRAE Level I audit, while larger projects might require an ASHRAE Level II or Level III audit. Another option is the Investor Confidence Project standards. Note that free "Level I" type audits are currently provided by ComEd and Peoples Gas.

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- ii. The Contractor will also make a recommendation of whether the program will require an independent review of the audit and results, or other QA/QC processes. For example, other jurisdictions with PACE programs require that a third party that is independent from owner, lender, or utility to review the baseline and savings projections.

- iii. The Contractor will develop a process to ensure that the term of assessment does not exceed useful life of energy project paid for by the assessment, a requirement under the state statute. If the City of Chicago allows projects that consist of multiple improvements with varying lengths of useful life, the term of the assessment shall be no greater than the improvement with the longest useful life.

H. Financial requirements of the building owner: the Contractor will determine if any financial criteria will be considered, beyond those outlined (and required) in the state statute. Examples may include the debt service coverage ratio, and/or the combined loan to value ratio. The Contractor will also develop a process to ensure there is an appropriate ratio of amount of assessment to assessed value of property (or market value of property as determined by a recent appraisal from the last 12 months). This ratio should not exceed 25%, as per the state statute. The Contractor will develop the minimum PACE finance amounts, if any.

I. Documentation of savings: The Contractor will develop the process used to document energy and cost savings. One option might be to utilize the City's existing energy benchmarking policy. In addition, the building owner may be required to enroll in the Retrofit Chicago Energy Challenge (Chicago's voluntary energy challenge program). Additional processes may be required for the building owner to share information about savings after project completion.

J. Procedures to determine a reserve fund (aka credit enhancement). Note that a reserve fund is not required, but could be created as part of this program. These are tools that offer lenders protection against losses if a borrower defaults or is delinquent. Lenders can then offer a lower interest rate in return, or be willing to be more flexible when qualifying an applicant. Options include a debt service reserve fund or loan loss reserve fund. The reserve fund could be built up through administrative fees or created as part of the bonding process. The Contractor will provide a recommendation to the City on whether to set up a reserve fund, and if so, how to provide money for the reserve fund.

K. User Fees: the Contractor will propose to the City the appropriate amount of fees to charge property owners for participation in the PACE program (the "User Fees"). These may include one-time application fees, one-time administration fees, and/or ongoing program fees to be charged to record owners participating in the program that will be used to finance costs incurred by the City of Chicago as a result of the program. Note that Program Administrator Fees will fund the Contractor's initial and ongoing program operation costs. The Program Administrator Fees shall be the sole source of Contractor's compensation for the initial and ongoing operation costs. Currently proposed User Fees are as follows:

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Est*. Cosfc of Issuance'--*
Program Administrator Fee

Not; -, ?f'o Exceed: '
'■ " 1.00% of Project Cost

City of Chicago Dept. of Planning ^ar*; -:\$(Det;ermihe.d byjthe
 ^Development City
 * .f^'T
 Capital Provider Fee, .; -:'vEst. 1% to"- 2% ofSProject ;C.pst
 .-Loop Capital Underwriting Fee . 0y125%.of Lpan Amount
 Est. Upfront 'Third-Party Costs ¹ ,Y'Determined >.by criteria -
 .(appraisals, energy audits, etc.) 'approvfe'd, . -if ■: '
 ';/'. ■ by the City
 Est. Upfront Administrative Reserve,: ' -<4*:', "
 Account ,fpr Bond' Tr.us tee e-. | ' ' -\ \$100.0g-
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 Est. Upf ront -Reeordrng. Fee ,*,* KTI .-. . :
 \. {■■ ' \$350.00'
 Est. Upfront Trustee issuance Fee - '\$750.00
 E;st. Ongoing County 'Tax Col'l- 7--Determined by,;a negotiation¹
 ector'-Fees .i- '■'""v. with the^tax
 collector*;
 Est. Ongoing Fees (Assessor+Truste'e+Boi.Determined by the relevant' J.
 Servicer) ./•/;•';,-. _*■ •i-'third^partie^s.
 "I ..-It,.;. &

For purposes hereof, "Project Cost" shall mean both the cost of the qualifying improvements and the installation costs.

Installation costs may include, but are not limited to, the cost of and fees for energy, water and similar audits, appraisals, labor, designs, drawings, engineering services, building permit fees, surveys, inspections, materials required in connection with the installation of the qualifying improvements and technical reviews. The cost of qualifying improvements also include the cost of pre-paid warranties and service contracts for repairs and maintenance.

L. Mortgage holder's consent: a procedure and any standard forms for the property owner to obtain written consent from the mortgage holder before participating in the program, as required by the state statute. '

M. Additional quality assurance and antifraud measures. The Contractor will develop any additional procedures to ensure high quality and reduce any risk of fraud. This may include verification of the installed improvements.

N. General outline of the plan for marketing and education. (See Exhibit 1 B for more details). The Contractor will provide general information about the marketing and education plan.

In addition, the City will work with the Contractor to provide one additional item needed in the PACE Program Report: the identification of an official authorized to enter into an assessment contract on behalf of the City of Chicago.

The Contractor will also develop other items for the PACE Program Report that are not statutorily required, including the following:

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- MBE and WBE Participation. The City of Chicago would like to encourage that 26% of all payments for construction contracts (inclusive of any and all modifications and amendments and as measured by total contract price) to implement PACE projects at the properties may go to certified MBEs and 6% may go to certified WBEs. The Contractor shall actively conduct outreach to MBEs and WBEs and educate them on how to participate in the program. The Contractor shall also track MBE and WBE participation and report participation levels to the City in its annual report.
- The method of contractor selection. To ensure high quality and appropriate standards, the City expects that the Contractor

will pre-qualify contractors allowed to perform work, and will create any required selection or training standards for contractors. The Contractor will work with the City so that appropriate number of certified MBE and WBE firms are pre-qualified for the PACE program. Project owners will be required to use pre-qualified contractors, and will be encouraged to meet the suggested MBE and WBE participation goals established for this program.

- Collection of data necessary to evaluate the efficacy of the program over time. The Contractor will explain which entity would collect the data and what data would be collected.
- Anticipated roles and responsibilities: The Contractor will clearly describe roles and responsibilities of the City staff, the Contractor and any other partner or entity.

Phase I: Schedule of Performance

The Contractor shall produce the following Deliverables in accordance with the following timetable:

- **PACE Program Report**
 - o Initial draft due 10 business days after execution and delivery of this Agreement o Thereafter, each revised draft due 7 business days after receiving the City's comments to the previous draft, provided that the Program Report must be completed to the satisfaction of the City in accordance with the City's submission deadlines for the September 2018 City Council meeting, it being understood that the Contractor shall not be responsible for delays caused primarily by the City.
- Additional Program materials shall be due in accordance with the timelines set forth in the Program Report.

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EXHIBIT IB

PHASE II (BOND UNDERWRITING AND PROGRAM OPERATIONS): SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE

This scope of services includes additional terms and conditions for Phase II. The following are categories of tasks that may be included in Phase II. Actual tasks will be based upon the Program Ordinance, and the Commissioner may revise these Phase II Services, with the approval of the Contractor, to achieve compliance with the Program Ordinance.

A.) Phase II. Program Launch and Ongoing Program Operations

Task 1: Program Launch

The formal Program Launch will occur after the PACE-enabling ordinance is adopted by Chicago City Council. The formal Program Launch will include additional marketing and outreach to inform the key stakeholders that the program is available. The launch may

also include an event in which key stakeholder groups will convene to learn about PACE and how to participate in the program. The launch will also include release of finalized program materials, the program website, and other program communications. The city will develop any official communications, such as a press release, will engage bond counsel and bond trustee, and will develop and approve bond documents.

Task 2: Marketing & Education

In this task, Contractor will implement the marketing and education plan that was developed during Phase I of the project. The Contractor will further identify key stakeholder groups, and develop an appropriate outreach and marketing strategy for each group of stakeholders. Key stakeholder groups may include all of the following: Community leaders, building owners, contractors, real estate agents, environmental advocates, and mortgage holders.

This task also includes maintenance of the website and other communications. Outreach may include targeted campaigns using traditional methods, social media, or other means. Outreach may also include analysis and review of the existing building stock to target marketing towards opportunities with the greatest program impact. This task may also include developing partnerships with existing business or nonprofit organizations to conduct outreach and marketing.

Contractors are a key stakeholder group for PACE programs, and one of the goals of this task is to ensure that qualified contractors are available to conduct energy audits and implement PACE project improvements. Another goal is to have the PACE program use a diverse group of contractors local to Chicago, and to use MBE and WBE firms. Thus, this task includes developing and implementing a contractor workforce development, training and recruitment program, including but not limited to the following:

- A. Raising awareness of the program to local, Chicago-based contractors through marketing, outreach activities, and events.
- B. Providing technical training to contractors on how to apply for PACE financing and comply with the Program requirements.

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- C. Any pre-screening or verification processes for contractors, or contractor eligibility requirements, such as proof of relevant certifications, e.g., ASHRAE or other certifications for commercial energy consultants
- D. How property owners would provide feedback on contractor performance.
- E. How the program would reach out to and include women, minorities, and other targeted business owners.

Task 3: Program Operations

The Contractor will conduct all ongoing operations once the program is formally launched. This scope of work assumes that the program will run as a pilot for one year, so that all program requirements and materials will be tested during the pilot phase. After one year, the City of Chicago and the Contractor will review the program requirements and materials, and will make adjustments, if necessary, based on program outcomes and feedback from stakeholders in the first year.

Ongoing program operations, during both the initial pilot phase and the following operations phase, includes all of the following tasks:

- A. Application approvals: Review of applications to ensure that applicant meets all program criteria. If application materials are not complete, work with the applicant to provide missing information.
 - ' If the applicant does not meet program criteria, provide feedback as to the reason and provide information on how the applicant could become eligible.

- B. Roles and responsibilities: Upon approval of the initial application, inform the property owner of his or her responsibilities in the process, including determining final project scope, completing and submitting a closing verification package, and obtaining the mortgage holder's consent.
- C. Technical and financial underwriting: Review that the project and applicant have met all program requirements, and that the mortgage holder provides consent for the PACE financing.
- D. Verification of projects: Prior to closing each project, conduct a pre-closing verification, which will confirm the statutorily required eligibility requirements of the owner. In some cases, City staff may assist in these tasks, if the Contractor does not have the authority to complete the tasks. These include the following requirements:
 - i. The applicant is the legal property owner of the benefited property;
 - ii. The applicant is current on mortgage and tax payments (City staff will assist in determining that the applicant is current on tax payments);
 - iii. The applicant is not insolvent or the subject of bankruptcy proceedings;
 - iv. The applicant holds a title to the property to be subject to a PACE assessment that is not in dispute; and

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- v. The applicant has consent of any pre-existing mortgagee to the proposed PACE assessment through a written notice.
- E. Compliance with technical standards: Review the technical aspects of the energy project, including any energy audits or engineering studies.
- F. Special assessments: the Contractor will work with the applicant to move through the process required to establish the special assessments, as outlined in the Illinois Special Assessment Supplemental Bond and Procedures Act. This Act requires the project applicant to petition the Board of Local Improvements (BOLI) and may also require the applicant to go before a court of law in order to receive approval for the special assessment. Note that the Contractor may be able to develop a strategy to bundle several projects together when petitioning the BOLI and appearing in court. Each special assessment may also require approval of the City Council through a local ordinance, as per the Special Assessment Supplemental Bond and Procedures Act. Note that some or all of these steps may not be necessary if the state statute that governs PACE programs is amended in the future.
- G. Fee collection: Collect and retain the User Fees to fund ongoing operations.
- I I. Development/maintenance of documents: Update any documents as-needed, including program applications, RFI or RFPs for contractors or lenders, etc.
- I. Default procedures: Upon notification of an owner's default in payment of an assessment, notify the City of Chicago to enforce the assessment lien in accordance with law and the agreements between the parties.
- J. Quality Assurance: The Contractor will maintain program integrity through quality assurance and verification with reports and data generated from the program's operation. Using procedures developed in Phase I, collect information needed to ensure the energy and cost savings are documented. The Contractor may also review contractor work to ensure high quality.

K. Customer Service: Respond to questions and work with applicants to ensure a seamless experience as they work through the PACE financing process. Respond to inquiries from other entities, such as vendors, contractors, consultants, and the general public.

L. Bond Document Coordination:

- a. Intake of property owner-signed bond documents.
- b. Generate amortization schedule.
- c. Coordination with program team on lien recordation and bond closing documents.

M. Program Reporting: The Contractor will also provide bi-annual reporting, including but not limited to the following data:

- i. Overall program growth and performance.
- ii. Program impact, including but not limited to:

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- a. Number of participants and average project size.
- b. The value PACE projects added to buildings.
- c. Funds disbursed.
- d. Projected energy consumption reduction.
- e. Projected water consumption reduction.
- f. Projected renewable energy generated.
- g. Electric vehicle chargers installed.
- h. GHG emission reductions
- i. Workforce development
- j. MBE and WBE participation levels for (a) program administrator services, and
for (b) construction contracts funded through the PACE program

Phase II: Schedule of Performance

The Contractor shall produce the applicable Deliverables in accordance with the timeline set forth in the Program Report.

EXHIBIT 2

SCHEDULE OF COMPENSATION

Services will be self-financed through Program Administrator Fees.

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EXHIBIT 3
SPECIAL CONDITIONS REGARDING MBE/WBE COMMITMENT
AND MBE/WBE COMPLIANCE PLAN

For purposes of this Exhibit 3, "total contract price" means "Program Administrator Fees" generated under this Agreement, as contemplated in Exhibit 1A.

**ARTICLE 1. SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE
COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR COMMODITIES
OR SERVICES**

1.1. Policy and Terms

It is the policy of the City of Chicago that Local Businesses certified as Minority Owned Business Enterprises (MBE) and Women Owned Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses and all other Regulations promulgated under the aforementioned sections of the Municipal Code, as well as MBEs and WBEs certified by Cook County, Illinois, will have full and fair opportunities to participate fully in the performance of this contract. Therefore, the Contractor will not discriminate against any person or business on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income and will take affirmative action to ensure that women and minority businesses will have the maximum opportunity to compete for and perform subcontracts for supplies or services.

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all non-construction contracts to certified WBEs.

Accordingly, the Contractor commits to make Good Faith Efforts to expend at least the following percentages of the total contract price, if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
25%	5%

(See Form "Bidders Commitment to Utilize MBE and WBE Firms on No Stated Goals Contract" for Contract Specific Goals in the case of a contract subject to a bid preference pursuant to MCC 2-92-525.)

This commitment is met by the Contractor's status as a MBE or WBE, by a member of the Contractor having a status as a MBE or WBE, or by a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE or WBE participation in such joint venture), or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by any combination of the foregoing.

Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE, but not both to demonstrate compliance with the Contract Specific Goals.

The Contractor also may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector contracts.

Pursuant to MCC 2-92-535, the prime contractor may apply be awarded an additional 0.5 percent credit, up to a maximum of a total of 5 percent additional credit, for every 1 percent of the value of a contract self-performed by MBEs or WBEs, or combination thereof, that have entered into a mentoring agreement with the

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contractor or subcontractor-to-subcontractor mentoring agreement. This up to 5% may be applied to the Contract Specific Goals, or it may be in addition to the Contract Specific Goals.

1.2. Definitions

"Area of Specialty" means the description of an MBE or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE/WBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory (defined below). Credit toward this Contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

NOTICE: The City of Chicago does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.

"Bid" means a bid, proposal, or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification of task order request (issued in accordance with the Master Consulting

Agreement) that is issued by the City.

"Bidder" means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

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

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"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, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract. In the case of a contract subject to the bid incentive set forth in MCC 2-92-525, "Contract Specific Goals" means the utilization percentage for MBEs or WBEs to which contractor committed with its bid.

"Contractor" means any person or business entity that has entered into a contract with the City as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is performed in their Area of Specialty directly related to the performance of the subject matter of the Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE, and WBE firms.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that the CPO or his or her designee has determined, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

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"Indirect Participation" refers to the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty related to other aspects of the Contractor's business. (Note: no dollar of such indirect MBE or WBE participation shall be considered in a Good Faith Efforts determination more than once against a contractor's MBE or WBE commitment with respect to all government contracts held by that contractor.)

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Mentor-Protege Agreement" means an agreement between a prime and MBE or WBE subcontractor ("Mentoring Agreement"), or an agreement between a prime's subcontractor and MBE or WBE subcontractor ("Subcontractor-to-Subcontractor Mentoring Agreement"), pursuant to MCC 2-92-535, that is approved by the City of Chicago and complies with all requirements of MCC 2-92-535 and any rules and regulations promulgated by the Chief Procurement Officer.

"Minority Owned Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a minority owned and controlled business by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

"Municipal Code of Chicago" or "MCC" means the Municipal Code of the City of Chicago.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor 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 distributor 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.

"Women Owned Business Enterprise" or "WBE" means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a women owned business by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

1.3. Joint Ventures

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

- a. The joint venture may be eligible for credit towards the Contract Specific Goals only if:
 - i. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
 - ii. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
 - iii. Each joint venture partner executes the bid to the City; and
 - iv. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and

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responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items i, ii, and iii above in this Paragraph a.

- b. The Chief Procurement Officer shall evaluate the Schedule B submitted on behalf of the proposed joint venture to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work, then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

- c. **Schedule B: MBE/WBE Affidavit of Joint Venture**

Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit a Schedule B and must clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

- i. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
- ii. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
- iii. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and
- iv. The MBE's or WBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

NOTE: Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than

as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

1.4. Counting MBE/WBE Participation Toward the Contract Specific Goals

Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-I for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract

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Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm that is certified as both a MBE and a WBE may only be listed on the bidder's compliance plan under one of the categories, but not both. Except as provided in MCC 2-92-525(b)(2), only Payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.

- a. Only expenditures to firms that perform a Commercially Useful Function as defined above may count toward the Contract Specific Goals.
 - i. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
 - ii. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.
 - iii. Indications that a subcontractor is not performing a commercially useful function include, but are not limited to, labor shifting and equipment sharing or leasing arrangements with the prime contractor or a first tier subcontractor.
- b. Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its Area of Specialty in which it is certified counts toward the Contract Specific Goals, except as provided in MCC 2-92-525(b)(2).
- c. For maintenance, installation, repairs or inspection, or professional services, if the MBE or WBE performs the work itself: 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies and materials purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or its affiliate). 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals.
- d. If the MBE or WBE is a manufacturer: 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
- e. If the MBE or WBE is a distributor or supplier: 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.
- f. If the MBE or WBE is a broker:
 - i. Zero percent (0%) of expenditures paid to brokers will be counted toward the Contract Specific Goals.
 - ii. As defined above, Brokers provide no commercially useful function.
- g. If the MBE or WBE is a member of the joint venture contractor/bidder:

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- i. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE "performs with its own forces toward the Contract Specific Goals; or
- ii. If employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in the Schedule B.
- iii. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs.
 - h. If the MBE or WBE subcontracts out any of its work: \
- i. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.
- ii. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except as allowed by (c) above).
- iii. The fees or commissions charged for providing a bona fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- iv. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- v. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

1.5. Regulations Governing Reductions to or Waiver of MBE/WBE Goals

The following Regulations set forth the standards to be used in determining whether or not a reduction or waiver of the MBE/WBE commitment goals of a particular contract is appropriate. If a bidder determines that it is unable to meet the MBE and/or WBE Contract-Specific Goals on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the MBE/WBE percentages submitted on the bidder's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

A bidder will be considered responsive to the terms and conditions of these Regulations if, at the time of bid, it submits a waiver request and all supporting documentation that adequately addresses the conditions for waiver of MBE/WBE goals, including proof of notification to assist agencies except:

- Bidders responding to Request for Proposals (RFPs) who have been identified as a short listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than

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fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and

- Bidders responding to Request for Information and or Qualifications (RFI/RFQs) deemed by the Chief Procurement Officer or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations.

Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his or her

discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder; or re-advertising the bid/proposal. All bidders must submit all required documents at the time of bid opening to expedite the contract award.

1.5.1. Direct Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

- a. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct work identified or related to the advertised bid/proposal. Documentation must include but is not necessarily limited to:
 1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
 2. A listing of all MBE/WBE firms contacted that includes:
 - o Name, address, telephone number and email of MBE/WBE firms solicited;
 - o Date and time of contact;
 - o Method of contact (written, telephone, transmittal of facsimile documents, email, etc.) •
 3. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
 - o Project identification and location;
 - o Classification/commodity of work items for which quotations were sought;
 - o Date, item and location for acceptance of subcontractor bid proposals;
 - o Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
 - o Affirmation that Good Faith Efforts have been demonstrated by:
 - choosing subcontracting opportunities likely to achieve MBE/WBE goals; and
 - not imposing any limiting conditions which were not mandatory for all subcontractors; and

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- providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date; and
- documented efforts or actual commitment to the indirect participation of MBE/WBE firms.

OR

- b. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:
 1. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
 - o A listing of all potential subcontractors contacted for a quotation on that work item;
 - o Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
 2. Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are

excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:

- o The City's estimate for the work under a specific subcontract;
- o The bidder's own estimate for the work under the subcontract;
- o An average of the bona fide prices quoted for the subcontract;
- o Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

2. Assist Agency Participation in waiver/reduction requests

Every waiver and/or reduction request must include evidence that the bidder has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community. This notice must be given at least five (5) business days in advance of the initial bid due date.

The notice requirement of this Section will be satisfied if a bidder contacts at least one of the associations on Attachment A to these Regulations when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B to these Regulations provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required to be submitted with the bid for any bid/proposal to be deemed responsive. If deemed appropriate, the Contract Compliance Officer may contact the assist agency for verification of notification.

3. Impracticability

If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.

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The requirements set forth in these Regulations (this subsection 1.5 "Regulations Governing Reduction to or Waiver of MBE/WBE Goals") shall not apply where the Chief Procurement Officer determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices or standards not previously known by the Chief Procurement Officer, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

1.6. Procedure to Determine Bid Compliance

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its Good Faith Efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals; and/or
- A request for reduction or waiver of the Contract Specific Goals in accordance with Section 2-92-450 of the MCC.

In the case of a bid utilizing the "Bid Incentive to Encourage MBE and WBE Utilization" pursuant to MCC 2-92-525(b)(2), failure to submit an MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goal to which the bidder has committed will not result in rejection of the bid, but the bidder may be found ineligible for the bid incentive.

Except as provided in MCC 2-92-525(b)(2), only compliance plans utilizing MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements will be counted toward the Contract Specific Goals.

The following Schedules and described documents constitute the bidder's MBE/WBE proposal, and must be submitted in accordance with the guidelines stated:

(1) Schedule C-I: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant.

The bidder must submit the appropriate Schedule C-I with the bid for each MBE and WBE included on the Schedule D-I. Suppliers must submit the Schedule C-I for Suppliers, first tier subcontractors must submit a Schedule C-I for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C-I for second tier Subcontractors. The City encourages subcontractors to

utilize the electronic fillable format Schedule C-I, which is available at the Department of Procurement Services website, <<http://cityofchicago.org/forms>>. Each Schedule C-I must be executed by each MBE and WBE and accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C-I has been submitted with the bid, an executed original Schedule C-I must be submitted by the bidder for each MBE and WBE included on the Schedule D-I within five business days after the date of the bid opening.

Failure to submit a completed Schedule C-I in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

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2) Letters of Certification.

A copy of each proposed MBE/WBE firm's current Letter of Certification from the City of Chicago or Cook County Illinois, must be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago and Cook County include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-I, must conform to their stated Area of Specialty. Letters of Certification for firms that the City or Cook County has found ineligible or has decertified will not be accepted.

3) **Schedule B: Affidavit of Joint Venture, and Joint Venture Agreements (if applicable).**

If the bidder's MBE/WBE proposal includes the participation of a MBE/WBE as joint venture on any tier (either as the bidder or as a subcontractor), the bidder must provide a copy of a Schedule B along with all other requirements listed in Section 1.3. above. In order to demonstrate the MBE/WBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract.

4) **Schedule D-I: Required Schedules Regarding MBE/WBE Utilization**

Bidders must submit, together with the bid, a completed Schedule D-I committing them to the utilization of each listed MBE/WBE firm. The City encourages bidders to utilize the electronic fillable format Schedule D-I, which is available at the Department of Procurement Services website, <<http://cityofchicago.org/forms>>. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section 1.5 "Regulations Governing Reductions to or Waiver of MBE/WBE Goals" herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-I. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, depends upon requirements agreements and blanket agreements, as percentages of the total -estimated usage. All commitments made by the bidder's Schedule D-I must conform to those presented in the submitted Schedule C-I. If Schedule C-I is submitted after the opening, the bidder may submit a revised Schedule D-I (executed and notarized to conform with the Schedules C-I). Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-I and D-I.

All commitments for joint venture agreements must be delineated in the Schedule B.

5) Application for Approval of Mentor Protege Agreement

Any applications for City approval of a Mentor Protege agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

1.7. Reporting Requirements During the Term of the Contract

- a. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.

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- b. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- c. Once the prime Contractor has reported payments made to each subcontractor, including zero dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
- d. All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <<https://chicago.mwdbe.com>>
- e. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
- f. The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after project closeout. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

1.8. Changes to Compliance Plan

1.8.1. Permissible Basis for Change Required

No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Contract Compliance Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:

- a) Unavailability after receipt of reasonable notice to proceed;
- b) Failure of performance;
- c) Financial incapacity;
- d) Refusal by the subcontractor to honor the bid or proposal price or scope;
- e) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- f) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- g) The subcontractor's withdrawal of its bid or proposal; or
- h) De-certification of the subcontractor as a MBE or WBE (graduation from the MBE/WBE program does not constitute de-certification).
- i) Termination of a Mentor Protege Agreement.

1.8.2. Procedure for Requesting Approval

If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

- a) The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
- b) The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.
- c) Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of Good Faith Efforts, must meet the requirements in section 5. If the MBE or WBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.
- d) If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
- e) A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

1.9. Non-Compliance and Damages

Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract, at law or in equity: (1) failure to demonstrate Good Faith Efforts, except in the case of a contract where a bid incentive under MCC 2-92-525 was taken into consideration in the award; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.

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Payments due to the contractor may be withheld until corrective action is taken.

Pursuant to MCC 2-92-445 or 2-92-740, as applicable, remedies or sanctions may include a penalty in the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs, and disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to MCC 2-92-445 or 2-92-740, within 15 business days of the final determination.

In the case of a in the case of a contract for which a bid incentive under MCC 2-92-525 was taken into consideration in the award, any contractor that has failed to retain the percentage of MBE or WBE subcontractor committed to in order for the bid incentive to be allocated will be fined an amount equal to three times the amount of the bid incentive allocated, unless the contractor can demonstrate that due to circumstances beyond the contractor's control, the contractor for good cause was unable to retain the percentage of MBE or WBE subcontractors throughout the duration of the contract period.

1.10: Arbitration

- a) In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide that any disputes between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE/WBE.
- b) An MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitral process. Except as otherwise agreed to in

writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.

- c) All arbitration fees are to be paid pro rata by the parties, however, that the arbitrator is authorized to award reasonable expenses, including attorney and arbitrator fees, as damages to a prevailing MBE/WBE.
- d) The MBE/WBE must send the City a copy of the Demand for Arbitration within ten (10) calendar days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

1.11. Equal Employment Opportunity

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Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law.

1.12. Attachments and Schedules

The following attachments and schedules follow, they may also be downloaded from the Internet at:

<<http://www.cityofchicago.org/forms>> ,

- Attachment A: Assist ,Agencies
- Attachment B: Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals
- Schedule B: Affidavit of Joint Venture (MBE/WBE)
- Schedule C-I: Letter of Intent From MBE/WBE To Perform As Subcontractor, Supplier and/or Consultant
- Schedule D-I: Compliance Plan Regarding MBE/WBE Utilization

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Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

<p>51st Street Business Association * 220 E 51st Street Chicago, IL 60615 Phone- 773-285-3401 Fax: 773-285-3407 Email: the51ststreetbusinessassociation@yahoo.com <mailto:ststreetbusinessassociation@yahoo.com>Web: www.51stStreetChicago.com <http://www.51stStreetChicago.com>Maintains list of certified firms: Yes Provides training for businesses: Yes</p>	<p>African American Contractors Association - AACA P.O. Box #19670 Chicago, IL 60619 Phone- 312-915-5960 Email: aacanatlassoc(3)gmail.com Web: www.aacanatl.org <http://www.aacanatl.org> Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Angel of God Resource Center, Inc. 14527 S. Halsted Chicago, IL 60827 Phone: 708-392-9323 Fax: 708-880-0121 Email: asmith5283(S)yahoo.com; aoqrcOanqelofqodresource center, org Web: www.anqelofqodresourcecenter.org <http://www.anqelofqodresourcecenter.org>Maintains list of certified firms: No Provides training for businesses: Yes</p>	<p>Association of Asian Construction Enterprises 5677 W. Howard Niles, IL 60714 Phone: 847-673-7377 Fax 847-673-2358 Email: nakmancorp(5)aol.com Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>Austin African American Business Networking Assoc. 5820 W. Chicago Ave., Chicago, IL 60651 Phone: 773-626-4497 Email: aaabna(S)yahoo.com Web: www.aaabna.org <http://www.aaabna.org>Maintains list of certified firms: No Provides training for businesses: Yes</p>	<p>Black Contractors United 12000 S. Marshfield Ave Calumet Park, IL 60827 Phone: 708-389-5730 Fax: 708-389-5735 Email: bcunewera(5)att net Web: www.blackcontractorsunited.com <http://www.blackcontractorsunited.com> Maintains list of certified firms: Yes Provides training for businesses: Yes</p>
<p>* * Business Leadership Council 2650 3179 N Clark St., 2nd Floor Chicago, IL 60606 312-628-7844 Phone: 773-303-0167 Fax: 312-628-7843 0168 Email- Karen r@businessleadershipcouncil org Email: iholston(5)lqbtcc.com Web: www.businessleadershipcouncil.org Web: www.lqbtcc.com <http://lqbtcc.com> Maintains list of certified firms- Yes Provides training for businesses: Yes</p>	<p>LGBT Chamber of Commerce of Illinois 230 W. Monroe Street, Ste Chicago, IL 60657 Phone Fax 773-303- Maintains list of Provides training for businesses- Yes</p>
<p>* * Chatham Business Association Small Business Dev. 60603-6233 Phone- 773-994-5006 Fax. 312-755-8890 Email melindakellvOcbaworks.org cbaworks.org Web: www.chicagomsdc.org Maintains list of certified firms. Yes Provides training for businesses. Yes</p>	<p>Chicago Minority Supplier Development Council Inc. 800 E 78th Street Chicago, IL 60619 Phone. 312-755-2550 Fax: 773-855-8905 Email. pbarreda(S)chicagomsdc org Web: www Maintains list of certified firms: Yes Provides training for businesses: Yes</p>

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Chicago Urban League

4510 S. Michigan Ave Chicago, IL 60653 Phone: 773-624-8810 Fax: 773-451-3579
Email: sbrinston@thechicagourbanleague.org <mailto:sbrinston@thechicagourbanleague.org>Web: www.cul-chicago.org <http://www.cul-chicago.org>Maintains list of certified firms: Yes Provides training for businesses. Yes

Contractor Advisors Business Development Corp.

1507 E. 53rd Street, Suite 906

Chicago, IL 60615
Phone: 312-436-0301
Email info@contractoradvisors.us <<mailto:info@contractoradvisors.us>>
Web: www.contractoradvisors.us <<http://www.contractoradvisors.us>>
Maintains list of certified firms: Yes
Provides training for businesses: Yes
Chicago Women in Trades (CWIT)
2444 W. 16th Street
Chicago, IL 60608
Phone: 312-942-1444
Jayne Vellinga, Executive Director
Email: ivellinga@cwit2.org <<mailto:ivellinga@cwit2.org>>
Web: www.chicagowomenintrades2.org <<http://www.chicagowomenintrades2.org>>
Maintains list of certified firms: No
Provides training for businesses: Yes

, Cosmopolitan Chamber of Commerce

1633 S. Michigan Avenue
Chicago, IL 60616 , Phone: 312-971-9594 i Fax: 312-341-9084 ; Email:
jrmcgowan@cosmochamber.orgmailto : sf stant ;ley@contractoradvisors.us <<mailto:ley@contractoradvisors.us>> , Web:
www.cosmochamber.org <<http://www.cosmochamber.org>> . Maintains list of certified firms: Yes Provides training for businesses: Yes

Do For Self Community Development Co.

7447 S South Shore Drive, Unit 22B
Chicago, IL 60649
Phone: 773-356-7661
Email: dennisdoforself@hotmail.com <<mailto:dennisdoforself@hotmail.com>>
Web: www.doforself.org <<http://www.doforself.org>>
Maintains list of certified firms: No
Provides training for businesses: Yes

Far South Community Development Corporation

9923 S. Halsted Street, Suite D Chicago, IL 60628 Phone- 773-941^833 Fax. 773-941-5252
Email: mail to : lacy@farsouth.org <<mailto:lacy@farsouth.org>>Web: www.farsouthcdc.org <<http://www.farsouthcdc.org>>Maintains list of certified
firms: No Provides training for businesses: Yes

Federation of Women Contractors

216 W. Jackson Blvd. #625 Chicago, IL 60606 Phone. 312-360-1122 Fax 312-750-1203 Email: fwcchicago@aol.com
<<mailto:fwcchicago@aol.com>>Web www.fwcchicago.com <<http://www.fwcchicago.com>> com Maintains list of certified firms: Yes Provides training for businesses.
Yes

Fresh Start Home Community Development Corp.

5168 S. Michigan Avenue, 4N Chicago, IL 60615 Phone: 312-632-0811 Fax: 855-270-4175 Email: Info@FreshStartNow.us
<<mailto:Info@FreshStartNow.us>>Web: www.FreshStartNow.us Maintains list of certified firms: Yes Provides training for businesses: Yes

Greater Englewood Community Development Corp.

815 W. 63rd Street Chicago, IL 60621 Phone 773-651-2400 Fax: 773-651-2400
Email, iharbin@greaterenglewoodcdc.org <<mailto:iharbin@greaterenglewoodcdc.org>>Web. www.greaterenglewoodcdc.org
<<http://www.greaterenglewoodcdc.org>>Maintains list of certified firms Yes Provides training for businesses Yes
Greater Pilsen Economic Development Assoc. *
1801 S. Ashland
Chicago, IL 60608
Phone: 312-698-8898
Email: greaterpilsen@gmail.com
Web www.greaterpilsen.org <<http://www.greaterpilsen.org>>
Maintains list of certified firms: Yes
Provides training for businesses: Yes

Greater Far South Halsted Chamber of Commerce

10615 S. Halsted Street Chicago, IL 60628 Phone: 518-556-1641 Fax: 773-941-4019
Email: halstedchamberevents@gmail.com <<mailto:halstedchamberevents@gmail.com>>Web: www.greaterfarsouthhalstedchamber.org
<<http://www.greaterfarsouthhalstedchamber.org>> orq Maintains list of certified firms: Yes Provides training for businesses: Yes

Greater Southwest Development Corporation

2601 W. 63rd Street
Chicago, IL 60629
Phone: 773-362-3373
Fax: 773-471-8206
Email: c.iamas@greatersouthwest.org <<mailto:c.iamas@greatersouthwest.org>>

Web: www.greatersouthwest.org <<http://www.greatersouthwest.org>>

Maintains list of certified firms: No

Provides training for businesses: Yes

Hispanic American Construction Industry Association (HACIA) *

650 W. Lake St., Unit 415 Chicago, IL 60661 Phone: 312-575-0389 Fax: 312-575-0544 Email: jperez@haciaworks.org

<<mailto:jperez@haciaworks.org>>Web: www.haciaworks.org <<http://www.haciaworks.org>>Maintains list of certified firms: Yes

Provides training for businesses: Yes

Illinois Hispanic Chamber of Commerce

222 Merchandise Mart Plaza, Suite 1212 c/o 1871

Chicago, IL 60654

Phone: 312-425-9500

Email: aalcantar@ihccbbusiness.net <<mailto:aalcantar@ihccbbusiness.net>>

Web' www.ihccbbusiness.net <<http://www.ihccbbusiness.net>>

Maintains list of certified firms: Yes

Provides training for businesses: Yes

Illinois State Black Chamber of Commerce

411 Hamilton Blvd., Suite 1404 Peoria, Illinois 61602 Phone: 309-740-4430 / 773-294-8038 Fax: 309-672-1379

Email: [Larrivory\(S\)IllinoisBlackChamber.org](mailto:Larrivory(S)IllinoisBlackChamber.org), vqilb66709@vahoo.com www.illinoisblackchamberofcommerce.org

<<http://www.illinoisblackchamberofcommerce.org>>Maintains list of certified firms: Yes Provides training for businesses: Yes

if

Latin American Chamber of Commerce

3512 W. Fullerton Avenue Chicago, IL 60647 Phone: 773-252-5211 Fax: 773-252-7065

Email: dlorenzopadron@LACCUSA.com <<mailto:dlorenzopadron@LACCUSA.com>>Web: www.LACCUSA.com <<http://www.LACCUSA.com>>Maintains list of certified firms: Yes Provides training for businesses: Yes

JLM Business Development Center

2622 W. Jackson Boulevard Chicago, IL 60612 Phone: 773-826-3295 Fax- 773-359-4021 Email: ilmbizcenter@gmail.com

<<mailto:ilmbizcenter@gmail.com>>Web: www.ilmcenter.org <<http://www.ilmcenter.org>> orq Maintains list of certified firms: Yes Provides training for businesses: Yes

National Association of Women Business Owners

500 Davis Street, Ste812 Evanston, IL 60201 Phone: 773-410-2484 Fax: 847-328-2018 Email: wiaehn@nawbochicago.org orq Web:

www.nawbochicago.org <<http://www.nawbochicago.org>>Maintains list of certified firms: Yes Provides training for businesses: Yes

National Black Wall Street

4655 S. King Drive, Suite 203

Chicago, IL 60653 ■

Phone: 773-268-6900

Fax. 773-392-0165

Email: markallen2800@aol.com <<mailto:markallen2800@aol.com>>

Web: www.nationalblackwallstreetchicago.org <<http://www.nationalblackwallstreetchicago.org>> orq

Maintains list of certified firms Yes

Provides training for businesses. Yes

National Organization of Minority Engineers (NOME)

33 W Monroe, Suite 1540

Chicago, IL 60603

Phone 312-960-1239

Email grandeevents1@sbcglobal.net

Web: www.nomeonline.org <<http://www.nomeonline.org>> orq

Maintains list of certified firms Yes

Provides training for businesses Yes

Neighborhood Development Services, NFP

10416 South Maryland Avenue Chicago, IL 60628 Phone: 773^13-9348 Fax: 773-371-0032
Email: neighborhooddevservices@gmail.com Web: www.ndsnfp.org <http://www.ndsnfp.org> Maintains list of certified firms: Yes Provides training for businesses: Yes
Rainbow/PUSH Coalition *
930 E. 50th Street
Chicago, IL 60615
Phone: 773-256-2768
Fax: 773-373-4103
Email: imitchell@rainbowpush.org <mailto:imitchell@rainbowpush.org>
Web: www.rainbowpush.org <http://www.rainbowpush.org>
Maintains list of certified firms: Yes
Provides training for businesses: No

Real Men Charities, Inc.

2423 E. 75th Street
Chicago, IL 60649
Phone: 773^25-4113
Email: vmoyo@realmencook.com <mailto:vmoyo@realmencook.com>
Web: www.realmencook.com <http://www.realmencook.com>
Maintains list of certified firms: No
Provides training for businesses: Yes

South Shore Chamber, Inc.

1750 E. 71st Street
Chicago, IL 60649-2000
Phone: 773-955- 9508
Tonya Trice, Executive Director
Email: ttrice@southshorechamberinc.org <mailto:ttrice@southshorechamberinc.org>
Web: www.southshorechamberinc.org <http://www.southshorechamberinc.org>
Maintains list of certified firms: Yes
Provides training for businesses: Yes

, RTW Veteran Center

; 7415 E. End, Suite 120
Chicago, IL 60649 : Phone: 773^06-1069 i Fax: 866-873-2494 i Email: rtwvetcenter@yahoo.com <mailto:rtwvetcenter@yahoo.com>: Web: www.rtwvetcenter <http://www.rtwvetcenter> orq : Maintains list of certified firms: Yes i Provides training for businesses. Yes

; St. Paul Church of God in Christ Community i Development Ministries, Inc. (SPCDM)

: 4550 S. Wabash Avenue i Chicago, IL. 60653 Phone: , Phone: 773-538-5120 ' Fax: 773-538-5125
Email spcdm@sbcqglobal.net <mailto:spcdm@sbcqglobal.net>
Web: www.stpaulcdm.org <http://www.stpaulcdm.org> i Maintains list of certified firms: No | Provides training for businesses: Yes

The Monroe Foundation

1547 South Wolf Road
Hillside, Illinois 60162
Phone: 773-315-9720
Email: omonroe@themonroefoundation.org
Web: www.themonroefoundation.org <http://www.themonroefoundation.org>
Maintains list of certified firms' No
Provides training for businesses: Yes

Women's Business Development Center

8 S. Michigan Ave., 4th Floor
Chicago, IL 60603
Phone 312-853-3477
Fax: 312-853-0145
Email, fcurry@wbdc.org <mailto:fcurry@wbdc.org>
Web: www.wbdc.org <http://www.wbdc.org>
Maintains list of certified firms Yes
Provides training for businesses: Yes

US Minority Contractors Association, Inc.

1250 Grove Ave. Suite 200 Barrington, IL 60010 Phone: 847-708-1597 Fax: 847-382-1787

Email: admin@usminoritycontractors.org Web: www.USMinorityContractors.org <<http://www.USMinorityContractors.org>> Maintains list of certified firms.

Yes Provides training for businesses: Yes

Urban Broadcast Media, Inc.

4108 S. King Drive,

Chicago, IL 60653

Phone 312-614-1075

Email drleonfinnev312@gmail.com

Web: www.urbanbroadcastmedia.org <<http://www.urbanbroadcastmedia.org>>

Maintains list of certified firms. No

Provides training for businesses. Yes

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Women Construction Owners & Executives (WCOE)'

Chicago Caucus

308 Circle Avenue

Forest Park, IL 60130

Phone: 708-366-1250

Email: mkmtaimkmservices.com <<http://kmservices.com>>

Web: www.wcoeusa.org <<http://www.wcoeusa.org>>

Maintains list of certified firms: Yes

Provides training for businesses. No

Your Community Consultants Foundation

9301 S. Parnell Ave.,

Chicago, IL 60620

Phone: 773-224-9299

Fax: 773-371-0032

Email: [allen81354\(5\)aol.com](mailto:allen81354(5)aol.com)

Maintains list of certified firms: No

Provides training for businesses: Yes

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Attachment B - Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals

On Bidder/Proposer's Letterhead - SEND TO THE ASSIST AGENCIES - DO NOT SEND TO THE CITY

RETURN RECEIPT REQUESTED (Date)

Specification No.: {Specification Number}

Project Description: {PROJECT DESCRIPTION}

(Assist Agency Name and Address - SEND TO THE ASSIST AGENCIES - DO NOT SEND TO THE CITY)

Dear :

(Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/ Minority/Women Business Enterprise contract goal. Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted. If you are aware of such a firm, please contact

Name of Company Representative at Address/Phone

within (10) ten business days of receipt of this letter.

Under the City of Chicago's MBE/WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within ten (10) working days of your receipt of this letter to:

Monica Jimenez, Deputy Procurement Officer
Department of Procurement Services City of Chicago
121 North La Salle Street, Room 806
Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at Sincerely,

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Schedule B - Affidavit of Joint Venture

1 Note to draft: Requirement to deliver Contractor's LLC Agreement to be discussed.

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SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case, however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their current Letter of Certification.

All Information Requested by this Schedule must Be Answered in the Spaces Provided. Do Not Refer to Your Joint Venture Agreement Except to Expand on Answers Provided on this Form. If Additional Space Is Required, Additional Sheets May Be Attached.

- I. Name of joint venture: _____ Address of joint venture _____
Phone number of joint venture: _____
- II. Identify each non-MBE/WBE venturer(s):
Name of Firm _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____
- III. Identify each MBE/WBE venturer(s):
Name of Firm: _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____
- IV Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture _____
- V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.
- VI. Ownership of the Joint Venture.
A. What are the percentage(s) of MBE/WBE ownership of the joint venture?
MBE/WBE ownership percentage(s) _____
Non-MBE/WBE ownership percentage(s) _____
B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):
1. Profit and loss sharing' _____

2. Capital contributions'

(a) Dollar amounts of initial contribution:

Page 1 of 5

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Schedule B: Affidavit of Joint Venture (MBE/WBE)

(b) Dollar amounts of anticipated on-going contributions:.

Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer): ;

Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control:

Provide copies of all written agreements between venturers concerning this project.

Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements)

Joint venture check signing:

Authority to enter contracts on behalf of the joint venture Signing, co-signing and/or collateralizing loans

Acquisition of lines of credit:

Page 2 of 5

Schedule B: Affidavit of Joint Venture (MBE/WBE)

E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements-

G. Management of contract performance. (Identify by name and firm only):

1. Supervision of field operations-

2 Major purchases:

3. Estimating.

4. Engineering:.

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the managing partner, if any, and describe the means and measure of their compensation

C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project⁷

IX State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-MBE/WBE firm, the MBE/WBE firm, or the joint venture.

Schedule B: Affidavit of Joint Venture (MBE/WBE)

Trade	Non-MBE/WBE Firm (Number)	MBE/WBE (Number)	Joint Venture (Number)
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-

If any personnel proposed for this project will be employees of the joint venture

A. Are any proposed joint venture employees currently employed by either venturer?

A. Currently employed by non-MBE/WBE (number) Employed by MBE/WBE

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:

C. Which venturer will be responsible for the preparation of joint venture payrolls:

X. Please state any material facts of additional information pertinent to the control and structure of this joint venture

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of MBE/WBE Partner Firm

Name of Non-MBEAA/BE Partner
Firm

Signature of Affiant

Signature of Affiant

Name and Title of Affiant

Name and Title of Affiant

Date Date

On this day of , 20 , the above-signed officers

(names or affiants)

personally appeared and, known to me to be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Signature of Notary Public

My Commission Expires:

(SEAL) Page 5 of 5

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Schedule C-I: Letter of Intent From MBE/WBE To Perform As Subcontractor, Supplier and/or Consultant

SCHEDULE C-1

MBE/WBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant

FOR

NON-CONSTRUCTION PROJECTS ONLY

Project Name:

Specification No.:

From

(Name of MBEAABE Firm)

To:

and the City of Chicago,

(Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago or Cook County, Illinois Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer." 60% participation is credited for the use of a MBE or WBE "regular dealer."

The undersigned is prepared to perform the following services in connection with the above named project/contract. If more space is required to fully describe the MBE or WBE proposed scope of work and/or payment schedule, including a description of the commercially useful function being performed. Attach additional sheets as necessary:

The above described performance is offered for the following price and described terms of payment:

SUB-SUBCONTRACTING LEVELS

A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule.

% of the dollar value of the MBE or WBE subcontract that will be subcontracted to non MBE/WBE contractors

% of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or WBE contractors.

NOTICE: If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to Non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment.

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago

The undersigned has entered into a formal written mentor protege agreement as a subcontractor/protege with you as a Prime Contractor/mentor () Yes () No

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

(signature of HresKient/Lvmer/ULU or Authorized Agent or MbtJWbb) (date)

(Name, Title, and Address)

(business phone number)

08G013

Page 1 of 1

Schedule D-1: Affidavit of Implementation of MBE/WBE Goals and Participation Plan

SCHEDULE D-1

Compliance Plan Regarding MBEAABE Utilization Affidavit of Prime Contractor

FOR

NON-CONSTRUCTION PROJECTS ONLY

MUST BE SUBMITTED WITH THE BID. FAILURE TO SUBMIT THE SCHEDULE D-1 WILL CAUSE THE BID TO BE REJECTED. DUPLICATE AS NEEDED.

Project Name _

Specification No

In connection with the above captioned contract, I HEREBY DECLARE AND AFFIRM that I am a duly authorized representative of

(Name of Prime Consultant/Contractor)

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the MBE/WBE goals of this contract

All MBEA/WBE firms included in this plan have been certified as such by the City of Chicago and/or Cook County, Illinois (Letters of Certification Attached)

I. Direct Participation of MBE/WBE Firms:

NOTE: The bidder/proposer shall, in determining the manner of MBE/WBE participation, first consider involvement with MBE/WBE firms as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract

A If bidder/proposer is a joint venture and one or more joint venture partners are certified MBEs or WBEs, attach copies of Letters of Certification, Schedule B form and a copy of Joint Venture Agreement clearly describing the role of each MBE/WBE firm(s) and its ownership interest in the joint venture.

B. Complete this section for each MBE/WBE Subcontractor/Supplier/Consultant participating on this contract

1. Name of MBE/WBE

Address

Contact Person

Phone Number

Dollar Value of Participation \$ _ Percentage of Participation % _

Mentor Protege Agreement (attach executed copy) () Yes () No Add'l Percentage Claimed ¹ %

Total Participation %

Name of MBE/WBE

Address

Contact Person

¹ The Prime Contractor may claim an additional 0.333 percent participation credit (up to a maximum of five (5) percent) for every one (1) percent of the value of the contract performed by the MBE/WBE protege firm

08/10/13

Page I of 5

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Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan

Phone Number

Dollar Value of Participation \$

Percentage of Participation %

() Yes () No Add'l Percentage Claimed. %

Mentor Protege Agreement (attach executed copy) (

Total Participation %

3. Name of MBE/WBE

Address

Contact Person

Phone Number

Dollar Value of Participation \$

Percentage of Participation %

Mentor Protege Agreement (attach executed copy) () Yes () No Add'l Percentage Claimed %

Total Participation %

4. Name of MBE/WBE

Address

Contact Person

Phone Number'

Dollar Value of Participation \$;

Percentage of Participation %

Mentor Protege Agreement (attach executed copy) () Yes () No Add'l Percentage Claimed %

Total Participation %

5. Attach Additional Sheets as Needed

II. Indirect Participation of MBE/WBE Firms

NOTE: This section need not be completed if the MBE/WBE goals have been met through the direct participation outlined in Section I If the MBE/WBE goals have not been met through direct participation, Contractor will be expected to demonstrate that the proposed MBE/WBE direct participation represents the maximum achievable under the circumstances Only after such a demonstration will indirect participation be considered

MBE/WBE Subcontractors/Suppliers/Consultants proposed to perform work or supply goods or services where such performance does not directly relate to the performance of this contract

1. Name of MBE/WBE

Address ;

Contact Person

Page 2 of 5

Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan

Phone Number' ■

Dollar Value of Participation S .

Percentage of Participation %

Mentor Protege Agreement (attach executed copy) () Yes () No Add'l Percentage Claimed. %

Total Participation %

Name of MBE/WBE

Address

Contact Person

Phone Number'

Dollar Value of Participation \$

Percentage of Participation %

Mentor Protege Agreement (attach executed copy) () Yes () No Add'l Percentage Claimed %

Total Participation %

Name of MBEArVBE

Address

Contact Person

Phone Number

Dollar Value of Participation S

Percentage of Participation %

Mentor Protege Agreement (attach executed copy) () Yes () No Add'l Percentage Claimed %

Total Participation %

Name of MBE/WBE

Address

Contact Person

Phone Number

Dollar Value of Participation \$

Percentage of Participation %

Mentor Protege Agreement (attach executed copy) () Yes () No Add'l Percentage Claimed %

Total Participation %

Attach Additional Sheets as Needed

Pago Z of 5

7 0

Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan III. Summary of MBE/WBE Proposal A. MBE Proposal

(Direct & Indirect)

1 MBE Direct Participation

MBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
----------------------	---	---

Total Direct MBE Participation

2 MBE Indirect Participation

MBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
----------------------	---	---

Total Indirect MBE Participation

B. WBE Proposal (Direct & Indirect)

1. WBE Direct Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
----------------------	---	---

Total Direct WBE Participation

2. WBE Indirect Participation

WBE Firm Name	Dollar Amount Participation (\$)	Percent Amount Participation (%)
---------------	-------------------------------------	-------------------------------------

Total Indirect WBE Participation

0e/2013

Pago 4 of 5

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Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan

The Prime Contractor designates the following person as its MBE/WBE Liaison Officer:

(Name-Please Print or Type) (Phone)

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT. THAT NO MATERIAL FACTS HAVE BEEN OMITTED. AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.

(Name of Prime Contractor - Print or Type)

State of _

(Signature)

County of _

(Name/Title of Affiant - Print or Type)

(Date)

On this day of , 20 , the above signed officer _
(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained

IN WITNESS WHEREOF, I hereunto set my hand and seal

(Notary Public Signature)

SEAL

Commission Expires

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Schedule C-I: Letter of Intent From MBE/WBE To Perform As Subcontractor, Supplier and/or Consultant

SCHEDULE C-1
MBE/WBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant
FOR
NON-CONSTRUCTION PROJECTS ONLY

Project Name: PACE Project Administrator

Specification No.:

From: Johnson Research Group, Inc.
(Name of MBE/WBE Firm)

To: Loop-Counterpointe PACE LLC and the City of Chicago.
(Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago or Cook County, Illinois Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer." 60% participation is credited for the use of a MBE or WBE "regular dealer."

The undersigned is prepared to perform the following services in connection with the above named project/contract. If more space is required to fully describe the MBE or WBE proposed scope of work and/or payment schedule, including a description of the commercially useful function being performed. Attach additional sheets as necessary. General advisory, research and/or coordinated services related to the property tax assessment and collection system

The above described performance is offered for the following price and described terms of payment: As needed basis, fees charged at hourly rates per contract up to 5% of the Program Administrator Fees.

SUB-SUBCONTRACTING LEVELS

A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule.

0 % of the dollar value of the MBE or WBE subcontract that will be subcontracted to non MBE/WBE contractors.

■ 0 % of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or WBE contractors.

NOTICE: If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to Non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment.

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago

The undersigned has entered into a formal written mentor protegee agreement as a subcontractor/protegee with you as a Prime Contractor/mentor. () Yes (X) No

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

J^iA^y~IAA

r 7

7/18/2018

Signature of President/Officer/Authorized Agent or Authorized Agent (UatsJ)

Ann Moroney / President

(Name/Dtie-Mease winn

amoronev@irq-inc.com <mailto:amoronev@irq-inc.com> / 312.235,0130

(tmail H Prions Numceu

EXHIBIT 4

ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT

ATTACH CONTRACTOR'S COMPLETED EDS HERE.

EXHIBIT 5

INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE

i

Program Administrator for Property Assessed Clean Energy Program

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

1) Workers Compensation and Employers Liability (Primary and Umbrella')

Workers Compensation Insurance, 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 \$500,000 each accident; \$500,000 disease-policy limit; and \$500,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Program Administrator may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence or for the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include but not be limited to the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Program Administrator's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Program Administrator's acts or omissions, whether such liability is attributable to the Program Administrator or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Program Administrator's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Program Administrator may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work, services or. operations to be performed, the Program Administrator must maintain Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. The City is to be added as an

additional insureds on a primary, non-contributory basis.

Program Administrator may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Program Administrator may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

5) Professional Liability

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

6) Valuable Papers

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

7) Commercial Crime

The Contractor must provide Commercial Crime coverage or equivalent covering all loss or damage by employee dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery and other crime related risks. The policy limit shall be written to cover losses in the amount of the maximum monies collected or received and in the possession of Contractor at any given time. The City is to be named loss payee. Coverage must include but not be limited to, third party fidelity coverage including loss due theft and must not contain a requirement for arrest and/or conviction.

Program Administrator is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned or used by Program Administrator).

B. Additional Requirements

Evidence of Insurance. Program Administrator must furnish the City, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street, IL 60602, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Program Administrator must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Program Administrator, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of

any of the required insurance provisions. Program Administrator must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Program Administrator for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Program Administrator to comply with required coverage and terms and conditions outlined herein will not limit Program Administrator's liability or responsibility nor does it relieve Program Administrator of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the "• Agreement may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Program Administrator must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Program Administrator.

Waiver of Subrogation. Program Administrator hereby waives its rights and its insurer(s)' rights of and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance herein for any loss arising from or relating to this Agreement. Program Administrator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Program Administrator's insurer(s).

Program Administrator's Insurance Primary. All insurance required of Program Administrator under this Agreement shall be endorsed to state that Program Administrator's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Program Administrator's Liabilities. The coverages and limits furnished by Program Administrator in no way limit the Program Administrator's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Program Administrator under this Agreement.

Insurance not Limited by Indemnification. 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.

Insurance and Limits Maintained. If Program Administrator maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and shall be entitled the higher limits and/or broader coverage maintained by Program Administrator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Joint Venture or Limited Liability Company. If Program Administrator is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

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Other Insurance obtained by Program Administrator. If Program Administrator desires additional coverages, the Program Administrator will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Program Administrator shall name the Subcontractor(s) as a named insured(s) under Program Administrator's insurance or Program Administrator will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Program Administrator. Program

Administrator shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Program Administrator is responsible for ensuring that each Subcontractor has named the City as an additional insured where required on an additional insured endorsement form acceptable to the City. Program Administrator is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Program Administrator must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Program Administrator's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

ATTACH COMPLETED CERTIFICATE OF INSURANCE HERE.

Name:

Eric Alini David Schaefer Jana M. Wesley Jeanne M. Dering Carlos Desmaras
EXHIBIT 6

LIST OF KEY PERSONNEL

EXHIBIT 7

CONTRACTOR'S RESPONSE TO CITY'S REQUEST FOR PROPOSALS ATTACH PROPOSAL HERE.
CHICAGO July 25, 2018

To the President and Members of the City Council:

Your Committee on Finance having had under consideration a substitute ordinance authorizing the Commissioner of the Department of Planning and Development to enter into and execute an Agreement with Loop -Counterpointe, PACE LLC as the Program Administrator for the Property Assessed Clean Energy (PACE) Program.

02018-4392

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

**This recommendation was concurred in by
of members of the committee with**

Respectfully submitted

Chairman