



Office of the City Clerk

City Hall
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Legislation Details (With Text)

File #: O2011-3720
Type: Ordinance **Status:** Passed
File created: 5/4/2011 **In control:** City Council
Final action: 6/8/2011
Title: Access license agreement for tree removal at various locations
Sponsors: Daley, Richard M.
Indexes: License
Attachments: 1. O2011-3720.pdf

| Date | Ver. | Action By | Action | Result |
|----------|------|--------------------------------------|---------------------|--------|
| 6/8/2011 | 1 | City Council | Passed | Pass |
| 6/6/2011 | 1 | Committee on Housing and Real Estate | Recommended to Pass | Pass |
| 5/4/2011 | 1 | City Council | Referred | |

OFFICE OF THE MAYOR

CITY OF CHICAGO
RICHARD M. DALEY
MAYOR

May 4, 2011

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

Ladies and Gentlemen:

At the request of the Commissioner of General Services, I transmit herewith an ordinance authorizing the execution of an access license agreement for tree removal.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

ORDINANCE

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

SECTION 1: The Commissioner of the Department of General Services and the Commissioner of the Department of Streets and Sanitation are authorized to execute on behalf of the City of Chicago a License Agreement authorizing access to City operations at multiple locations pursuant to Sale and Removal of Tree Material Specification No. 86452 RFQ No. 3439; such License Agreement to be approved as to form and legality by the Corporation Counsel in substantially the following form:

License Agreement

Sale and Removal of Tree Material Specification No. 86452 RFQ No. 3439

SECTION 2: This Ordinance shall be effective from and after the date of its passage and approval.

LICENSE NO.

LICENSE AGREEMENT

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THIS LICENSE AGREEMENT ("Agreement") is made and entered into this ___ day of ___, 2011 by and between, the CITY OF CHICAGO, an Illinois Municipal Corporation and home rule unit of government, acting by and through its Department of General Services and by and through its Department of Streets and Sanitation (the "City"), and ___ (the "Contractor")

whose offices are located at

RECITALS

WHEREAS, City has selected Contractor as the winning respondent to perform the services and tasks pursuant to City's "Sale and Removal of Tree Material" Specification No. -86452 RFQ No. 3439 (the "Contract"), a copy of which, is attached hereto as Exhibit A and made a part hereof; and

WHEREAS, City is the owner of certain property located at 10001 West Bryn Mawr Avenue in Chicago, Cook County, Illinois and is the Tenant of certain property located at 900 East 103rd Street property in Chicago, Cook County, Illinois, which includes the waste transfer sites depicted in Exhibit B-1 and Exhibit B-2 attached hereto and made a part hereof (collectively the "Fixed Transfer Sites"); and

WHEREAS, City is the owner of the property located at 4101 North Oak Park Avenue, 2505 West Grand Avenue, 4623 West Homer Street, 4255 West Ferdinand Street, 2348 South Ashland Avenue, 3859 South Iron Street, 829 West 120th Street, and the Tenant of the 4600 West 72nd Street in Chicago, Cook County, Illinois (collectively the "Emergency Transfer Sites"); and

WHEREAS, Contractor requires access the Fixed Transfer Sites on a recurring basis and access to the Emergency Transfer Sites on an as-needed basis, as determined by City's Department of Streets and Sanitation ("DSS"), in order perform the services and tasks pursuant to the Contract; and

WHEREAS, pursuant to the Contract, City has agreed to allow Contractor recurring access to the Fixed Transfer Sites and as-needed access to the Emergency Transfer Sites depicted on Exhibit C attached hereto and made a part hereof (collectively the "Premises"); and

NOW THEREFORE, in consideration of the covenants, terms and conditions set forth herein, the Parties hereto agree and covenant as follows:

SECTION 1. GRANT

City hereby provides Contractor with non-exclusive license and right of access to the Premises for the purpose of performing the services and tasks pursuant to the Contract.

SECTION 2. TERM

1

LICENSE NO.

The term of this License Agreement ("Term") shall commence on the execution date ("Commencement Date"), and shall end upon the termination of the Contract.

SECTION 3. LICENSE FEE

3.1 Fee. Contractor shall pay a license fee for access to the Premises in the amount of:

One Dollar (\$1.00) for the entire term, the receipt and sufficiency of said sum being herewith acknowledged by both parties.

Contractor shall also pay all amounts due under the Contract with respect to the marketing of tree debris material. Contractor shall also bear all other costs of its operations on the Premises in performing the tasks and services under the Contract, including, without limitation, costs of utilities, equipment, security, insurance, hauling and taxes.

SECTION 4. USE, ALTERATIONS AND ADDITIONS

4.1 Shared Use. City agrees to cooperate in the shared use of the Premises with the Contractor, subject to Section 9.14 below, and subject to the terms of the Contract.

4.2 Use of the Premises. Contractor shall not use the Premises in a manner that would violate any Law. Contractor further covenants not to do or suffer any waste or damage, comply in all respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments which may be applicable to the Premises or to the use or manner of use of the Premises, disfigurement or injury to any building or improvement on the Premises, or to fixtures and equipment thereof. Any activities on the Premises must be limited to performing the services and tasks pursuant to the Contract. These activities do not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Contractor shall not use said Premises for political or

religious activities. Contractor agrees that in utilizing said Premises that it shall not discriminate against any member of the public because of race, creed, color, sexual orientation, or national origin.

4.3 Alterations and Additions. Contractor may not make any alterations, additions, and improvements to the Premises, or store any other equipment on the Premises other than that directly used in the performance of the tasks and services required under the Contract.

SECTION 5. ASSIGNMENT AND LIENS

5.1 Assignment and Liens. Contractor shall not assign this License Agreement in whole or in part without the prior written consent of City, which shall be in City's sole discretion.

5.2 Contractor's Covenant against Encumbering Title. Contractor shall not do any act which shall in any way encumber the fee simple estates of City in any of the Fixed Transfer Sites and/or Emergency Transfer Sites (or the Fixed Transfer Site of the owner of the 900 East 103rd

LICENSE NO.

Street property) in and to the licensed Premises, nor shall such Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Contractor any claim to, or lien upon, any of the Premises arising from any act or omission of Contractor, or its contractors, respective officers, directors, agents, invitees; or employees.

5.3 Contractor's Covenant against Liens. Contractor shall not permit the Premises, in whole or in part, to become subject to any mechanic's, laborer's, or materialmen's liens on account of labor or material furnished to Contractor or claimed to have been furnished to Contractor. In case of any such lien attaching, Contractor shall immediately pay and remove such lien or furnish security or indemnify City in a manner satisfactory to City in its sole discretion to protect City against any defense or expense arising from such lien. Except during any period in which Contractor appeals any judgment or obtains a rehearing of any such lien, or in the event judgment is stayed, Contractor shall immediately pay any judgment rendered against Contractor, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If Contractor fails to pay and remove any lien or contest such lien in accordance herewith, City, at its election, may pay and satisfy same, and all sums so paid by City, with interest from the date of payment at the rate set at 12% per annum provided that such rate shall not be deemed usurious by any Federal, State, or Local Laws.

SECTION 6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. Contractor shall procure and maintain at all times, at Contractor's own expense, during the term of this License Agreement, the insurance coverages and requirements specified in the Contract.

6.2 Indemnification. Contractor shall indemnify, defend, and hold City and the owner of the 900 East 103rd Street Fixed Transfer Site harmless against all liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, costs, damages, and expenses (including reasonable attorney's fees, expenses, and court costs), whether such claim is related to or arises from personal injury or property damage which may be expended by or accrue against, be charged to, or be recovered from Contractor or City or the owner of the 900 East 103rd Street Fixed Transfer Site by reason of Contractor's performance of or failure to perform any of Contractor's obligations under this License Agreement or the Contract, or Contractor's negligent acts or failure to act, or resulting from the acts or failure to act of Contractor's contractors, respective officers, directors, agents, invitees, or employees.

SECTION 7. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS

7.1 Conflict of Interest. No official or employee of the City of Chicago, nor any member of any board, commission or agency of the City of Chicago, shall have any financial interest (as defined in Chapter 2-156 of the Municipal Code), either direct or indirect, in the Premises; nor shall any such official, employee, or member participate in making or in any way attempt to use his/her position to influence any governmental decision or action with respect to this License Agreement by the City.

3

LICENSE NO.

7.2 Duty of Comply with Governmental Ethics Ordinance. City and Contractor shall comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to section 2-156-120,

which states that no payment, gratuity, or offer of employment shall be made in connection with any City of Chicago contract, as an inducement for the award of that contract or order. Any contract or lease negotiated, entered into, or performed in violation of any of the provisions of Chapter 2-156 shall be voidable as to the City.

SECTION 8. FAILURE TO REMOVE PERSONS AND PROPERTY

8.1 Failure to Remove Persons and Property. Failure of Contractor to immediately remove all of Contractor's persons and personal property from the Premises at the end of the Term of this License Agreement shall obligate the Contractor to pay the City a license fee of \$1,000 per day for each day of such holdover use until such time as such removal occurs. During such unauthorized use period, all other provisions of this License Agreement shall remain in full force and effect.

SECTION 9. MISCELLANEOUS

9.1 Notice. All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other shall be in writing. All notices, demands and requests by Contractor to City shall be delivered by national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid addressed to City as follows:

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City of Chicago

Department of Streets and Sanitation 121 North LaSalle Street, Room 700 Chicago, Illinois 60602

City of Chicago

Department of General Services Office of Real Estate Management 30 North LaSalle Street, Suite 300 Chicago, Illinois 60602

or at such other place as City may from time to time designate by written notice to Contractor. All notices, demands, and requests by City to Contractor shall be delivered by a national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to Contractor as follows:

or at such other place as Contractor may from time to time designate by written notice to City. Any notice, demand or request which shall be served upon Contractor by City, or upon City by

4

LICENSE NO.

Contractor, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed.

9.2 Partial Invalidity. If any covenant, condition, provision, term or agreement of this License Agreement shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this License Agreement shall not be affected thereby, but each covenant, condition, provision, term or agreement of this License Agreement shall be valid and in force to the fullest extent permitted by law.

9.3 Governing Law. This License Agreement shall be construed and be enforceable in accordance with the laws of the State of Illinois.

9.4 Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this License Agreement. This License Agreement contains the entire agreement between the Parties and shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto.

9.5 Captions and Section Numbers. The captions and section numbers appearing in this License Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this License Agreement nor in any way affect this License Agreement.

9.6 Binding Effect of License Agreement. The covenants, agreements, and obligations contained in this License Agreement shall extend to, bind, and inure to the benefit of the Parties hereto and their legal representatives, heirs, successors, and assigns.

9.7 Time is of the Essence. Time is of the essence of this License Agreement and of each and every provision hereof.

9.8 No Principal/Agent or Partnership Relationship. Nothing contained in this License Agreement shall be

deemed or Construed by the Parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto.

9.9 Authorization to Execute License Agreement. The Parties executing this License Agreement hereby represent and warrant that they are duly authorized and acting representatives of City and Contractor respectively and that by their execution of this License Agreement, it became the binding obligation of City and Contractor respectively, subject to no contingencies or conditions except as specifically provided herein.

9.10 Termination of License Agreement. This License Agreement shall terminate upon the termination of the Contract. Such termination shall be without prepayment or penalties.

9.11 Force Majeure. When a period of time is provided in this License Agreement for either party to do or perform any act or thing, the party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, acts of terrorism, governmental

5

LICENSE NO.

regulation or control, and other causes beyond the reasonable control of the party, and in any such event the time period shall be extended for the amount of time the party is so delayed.

9.12 Amendments. From time to time, the parties hereto may amend this License Agreement with respect to any provisions reasonably related to Contractor's use of the Premises and/or City's administration of said License Agreement including, but not limited to, additional future Fixed Transfer Sites and/or Emergency Transfer Sites. Provided, however, that such Amendment(s) shall not serve to extend the term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such Amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both City and Contractor. Such Amendment(s) shall only take effect upon execution by both parties. Upon execution, such Amendment(s) shall become a part of this License Agreement and all other provisions of this License Agreement shall otherwise remain in full force and effect. ⁷

9.13 Primacy of Contract. Where any of the provisions of this License Agreement shall conflict with the Contract, the Contract shall control.

9.14 City Use Paramount. The parties acknowledge that the most important use of the Premises is for City operations as determined by City. Contractor shall refrain from undertaking any activities that interfere with City's primary use of the Premises.

SECTION 10. ADDITIONAL RESPONSIBILITIES OF CONTRACTOR

10.1 Satisfaction with Condition. Contractor agrees that Contractor has inspected the Premises and all related areas and grounds and that Contractor is satisfied with the physical condition thereof.

10.2 Repairs for Contractor Negligence, Vandalism, or Misuse. Contractor shall assume responsibility for any repairs to all of or any portion of any of the Premises necessitated by the negligence, intentional acts or failure to act, vandalism, misuse, theft, or other acts on any portion of any of the Premises by Contractor's employees, clients, invitees, agents, or contractors, or by unauthorized persons.

10.3 Security. Contractor acknowledges that City shall have no security obligations relative to Contractor's use of the Premises. Contractor shall be responsible for properly securing Contractor's equipment and supplies.

10.4 No Alcoholic Beverages. Contractor agrees that no alcoholic beverages of any kind or nature shall be sold, given away, or consumed on the Premises by Contractor or Contractor's employees, agents, or consultants.

10.5 Illegal Activity. Contractor, or any of its agents or employees, shall not perform or permit any practice that is injurious to the Premises or unreasonably disturbs other Contractors, is illegal, or increases the rate of insurance on the Premises.

6

LICENSE NO.

10.6 Hazardous Materials. Contractor shall keep out of the Premises any materials which cause a fire hazard or safety hazard and shall comply with reasonable requirements of City's fire insurance carrier; not destroy, deface, damage, impair, nor remove any part of the Premises or facilities, equipment or appurtenances thereto.

10.7 Permits. For any activity which Contractor desires to conduct on any of the Premises in which a license or

permit is required, said license or permit must be obtained by Contractor prior to using the respective Premises for such activity. The City of Chicago, Department of Streets and Sanitation and Department of General Services, must be notified of any such license or permit..

10.8 Condition at Termination. Upon the termination of this License Agreement, Contractor shall remove all equipment and/or materials placed on all of the Premises by Contractor or anyone acting by or under Contractor. Said removal shall be without cost to City.

10.9 No Other Rights. This Agreement does not give Contractor any other right with respect to the Premises. Any rights not specifically granted to Contractor by and through this document are reserved exclusively to City. Execution of this agreement does not obligate City in any manner and City shall not undertake any additional duties or services at City's sole discretion.

SECTION 11. CONTRACTOR DISCLOSURES AND REPRESENTATIONS

11.1 Business Relationships. Contractor acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Contractor hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this License Agreement or the transactions contemplated hereby.

11.2¹ Patriot Act Certification. Contractor represents and warrants that neither Contractor nor any Affiliate thereof (as defined in the next paragraph) is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment, the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

7

LICENSE NO.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to Contractor that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Contractor, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

11.3 Prohibition on Certain Contributions-Mayoral Executive Order No. 05-1. Contractor agrees that Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Contractor's contractors (i.e., any person or entity in direct contractual privity with Contractor regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("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 not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this Agreement by Contractor, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Contractor and the City, or (iv) during any period while an extension of this Agreement or any Other

Contract is being sought or negotiated.

Contractor represents and warrants that from the date the City approached the Contractor or the date Contractor approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

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

Contractor agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

Contractor agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

18

i

LICENSE NO.

If Contractor intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

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

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

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

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

(A) they are each other's sole domestic partner, responsible for each other's common welfare; and

(B) neither party is married; and

(C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

(D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and

(E) two of the following four conditions exist for the partners:

1. The partners have been residing together for at least 12 months.

2. The partners have common or joint ownership of a residence.

3. The partners have at least two of the following arrangements:

a. joint ownership of a motor vehicle;

b. a joint credit account;¹

c. a joint checking account;

d. a lease for a residence identifying both domestic partners as Contractors.

4. Each partner identifies the other partner as a primary beneficiary in a will.

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

9

LICENSE NO.

11.4 Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Agreement is executory, Contractor's, any general 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 designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Contractor's, general 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 the Contractor's eligibility for future contract awards.

11.5 Cooperation with Office of Inspector General and Office of Compliance. In accordance with Chapter 2-26-110 et seq. of the Municipal Code, Contractor acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate with the Office of the Inspector General and the Executive Director of the Office of Compliance in connection with any activities undertaken by such office with respect to this License Agreement, including, without limitation, making available to the Office of the Inspector General and the Executive Director the department's premises, equipment, personnel, books, records and papers. Contractor agrees to abide by the provisions of Chapter 2-26-110 et seq.

10

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LICENSE NO.

IN WITNESS WHEREOF, the Parties have executed this License Agreement as of the day and year first above written.

CITY OF CHICAGO, an Illinois Municipal Corporation, and home rule unit of government

BY: THE DEPARTMENT OF STREETS AND SANITATION

By: _:_

Commissioner

BY: THE DEPARTMENT OF GENERAL SERVICES

By: _:_

Commissioner ,

APPROVED AS TO FORM AND LEGALITY: BY: THE DEPARTMENT OF LAW

By: _:_

Deputy Corporation Counsel Real Estate Division

[INSERT NAME OF CONTRACTOR]

By: _

Name: Its:

11

EXHIBIT A

Sale and Removal of Tree Material Specification No. 86452 RFQ No. 3439

(To Come)

EXHIBITS B-1 AND B-2 Fixed Transfer Sites (To Come)

EXHIBIT C Emergency Transfer Sites (To Come)